1273.

# SUPREME COURT OF THE UNITED STATES.

## No. 144.

WILLIAM HOUSTON & AL., AND FRANCIS FISK & AL., PLAINTIFFS IN ERROR,

vs.

THE CITY BANK OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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STATE OF LOUISIANA,
*Commercial court of New Orleans:*

CITY BANK OF N. O.,
vs.
WILLIAM HOUSTON and others. } No. 6611.

*Petition.—Filed 23d April*, 1844.

To the honorable the commercial court of New Orleans.

The petition of the City Bank of New Orleans, a body corporate under the law, respectfully represents, that heretofore, to wit, on the 30th day of June, 1837, Thomas Banks, of New Orleans, and his wife, Charlotte Fogarty, being indebted to petitioner for money then and before to them loaned and advanced, executed and delivered to petitioner their certain bond or obligation in solido, bearing date as aforesaid, whereby the said Banks and wife acknowledged themselves indebted, and promised to pay, to petitioner at their banking house in said city, on the 30th day of June, 1838, the sum of fifty-five thousand dollars; and in order more fully to secure the repayment of said sum of money the said Banks, on the day first aforesaid, by act before H. B. Cenas, esq., notary public of said city, granted to petitioner a special mortgage and hypothecation upon the following property, to wit:

*First*. Seven lots of ground situate in the suburb St. Mary, above this city, (now Municipality No. two, of New Orleans,) in the square bounded by Tchoupitoulas, Gravier, Magazine, and Poydras streets, and designated by the numbers "twelve," "thirteen," "sixteen," "seventeen," "eighteen," "nineteen," and "twenty-four," and having the following dimensions, viz:

No. "twelve" measures twenty-two feet front on Natchez street, fifty-seven feet six inches and one-fifth in depth on the boundary line of lot No. nine, fifty-eight feet seven inches and four-fifths on the boundary line of lot No. thirteen, and twenty-two feet and half an inch in width on the rear line; No. "thirteen" measures twenty-two feet front on Natchez street, fifty-eight feet seven inches and four-fifths in depth on the boundary line of lot No. twelve, fifty-nine feet nine inches and two-fifths on the boundary line of lot No. sixteen, and twenty-two feet and half an inch in width on the rear line; No. "*sixteen*" measures twenty-two feet front on Natchez street, by fifty-nine feet nine inches and two-fifths in depth on the boundary line of lot No. thirteen, sixty feet eleven inches in depth on the boundary line of lot No. twenty-four, and twenty-two feet and half an inch in width on the rear line; No. "twenty-four" measures twenty-two feet front on Natchez street, by sixty feet eleven inches in depth on the boundary line of said lot No. sixteen, sixty-two feet one inch and two-fifths on the boundary lines of lots Nos. seventeen, eighteen, and nineteen, and twenty-two feet and half an inch in width on the rear line; No. "seventeen" measures twenty-two feet six inches front on Magazine street, by ninety feet nine inches in depth on one of

the side lines, eighty-eight feet eight inches in depth on the other side line, and twenty feet eight inches and two-fifths in width on the rear line; No. "eighteen" measures twenty-two feet six inches front on Magazine street, eighty-eight feet eight inches in depth on the boundary line of lot No. seventeen, eighty-six feet seven inches in depth on the boundary line of lot No. nineteen, and twenty feet eight inches and two-fifths in width on the rear line; and No. "nineteen" measures twenty-two feet six inches front on Magazine street, by eighty-four feet six inches in front and depth on Natchez street, eighty-six feet seven inches in depth on the boundary line of lot No. eighteen, and twenty-feet eight inches and two-fifths in width on the rear line; all which property was acquired by the said Thomas Banks, by purchase from Mathew Morgan, by an act passed before Louis T. Caire, a notary public of said city, on the twenty-sixth day of May, eighteen hundred and thirty-one.

*Second.* A certain irregular lot or portion of ground situate at and forming one of the corners of Magazine and Gravier streets, in the same square with the properties herein above described, measuring ninety-one feet nine inches front on Magazine street, by one hundred and twenty-six feet six inches in depth and front on Gravier street, one hundred and nine feet six inches in depth on the side line which separates it from the property now or formerly belonging to A. Labranche, and seventy-nine feet six inches in depth on the other side line which separates it from the property owned by the late Caleb D. Jordan, measuring back from Gravier street, (American measure;) which portion of ground was acquired by the said Thomas Banks, by purchase from Mrs. C. B. Wray, by an act passed before William Christy, esq., notary public in said city, on the first day of March, eighteen hundred and thirty.

*Third.* Two lots of ground situated in the same suburb and square, between Gravier and Poydras streets, and designated by the numbers three and four, on a plan drawn by Joseph Pilié, esq., city surveyor, on the twentieth day of May, eighteen hundred and thirty, and deposited in the office of Octave de Armas, notary public of said city, on the 4th day of February, 1831; said lot No. "three" measuring sixty feet front on Magazine street, by one hundred and fifty feet two inches in depth on the line separating it from lot No. four, and one hundred and fifty feet six inches in depth on the other side line; and said lot No. "four" measuring sixty feet front on said Magazine street, by the said depth on the line separating it from said lot No. three, (to wit, 150 feet 2 inches,) and one hundred and forty nine feet ten inches in depth on the other side line, (French measure;) which said two lots were purchased by the said Thomas Banks from Lucien G. Hileigsberg, by an act passed before G. R. Stringer, late a notary public in said city, on the eighth day of February, eighteen hundred and thirty-three; together with all and singular the buildings and improvements on the above described several properties, which buildings consist of the public house known as Bank's Arcade, and all the appurtenances thereto belonging; the said several lots of ground lying together and contiguous, and the

principal improvements thereon, consisting of said public house or arcade and stores, and offices adjoining thereto; all of which more fully and at large appears by the authentic copy of said act of mortgage and of said bond, which are here annexed for reference and greater certainty as to description.

And your petitioner further shews that on the 6th day of July, 1837, the said act of mortgage was duly recorded in the office of the recorder of mortgages in and for the city and parish of Orleans, as fully appears by the certificate of the said recorder annexed to the authentic copy of said act here presented, and that the said record has never been legally raised or cancelled, and as well the said mortgage as the said registry thereof remain in full and binding force and effect against all persons whatsoever.

Petitioner further shews that at the maturity of said bond or obligation, and at divers times thereafter, payment of the same was demanded of said Banks and wife, according to the tenor of said bond, and of the act of mortgage with which it is identified; but that said parties refused and neglected to pay the same, or any part thereof, except that certain payments were made by them on account, whereby the balance due was reduced to the sum of forty-four thousand dollars principal, besides interest at the rate of eight per centum per annum, according to the terms of said act, and prescribed by the charter of said City Bank from the thirtieth day of June, eighteen hundred forty-two, until paid; and that after said demands and payments made as aforesaid the said Thomas Banks having been decreed a bankrupt, payment of the balance due on said bond, to wit, the sum of $44,000 with interest as aforesaid was demanded of F. B. Conrad, esq., his assignee in bankruptcy, as will more fully appear by the protest and certificate of the notary, H. B. Cenas, esq., who made said demand, and that said assignee also neglected and refused to pay the same; all of said several demands having been made more than thirty days antecedent to the filing of this petition.

Now your petitioner further represents, that all and singular the premises and property aforesaid, subject to the mortgage aforesaid, and duly inscribed as aforesaid, have passed into the hands of sundry persons, third possessors thereof, claiming title under the assignee aforesaid in bankruptcy of said Thomas Banks, to wit, into the hands of John Freeland, Mark Davis, Paul Tulane, William Houston, J. G. Bernard, Louis Arban Caillaret, Xavier Lambert, Daniel Weaver, Samuel Gardiner Blanchard, Francis M. Fisk, Thomas M. Doyle, Francis Hanson Hatch, all residing in New Orleans, or there represented by agents or attorneys as hereinafter stated; the said several parties being severally holders of distinct portions of said property, divided in accordance with the partition walls of the buildings now standing thereon, and being respectively in the enjoyment of the rents, issues, and profits of said lands and buildings as owners; and that said several third possessors, at the time and before they took possession of said property, or acquired any title therein, well knew and were notified of the mort-

gage bearing thereon, and that said mortgage was duly inscribed; petitioners therefore do say that said mortgaged premises and appurtenances, and the rents and revenues thereof, remain subject to the payment of the balance due upon the said mortgage of petitioner, to wit, the said sum of $44,000 with interest at 8 p. c. per ann., from the 30th day of June, 1842, and that petitioner is entitled to relief according to the forms prescribed for the hypothecary action against third possessors.

Petitioner therefore prays that said parties be respectively cited in conformity to law, to wit: the said William Houston, a resident of England, by service upon Peter Maxwell, his attorney in fact, residing in New Orleans; the said Louis Arban Caillaret, a resident of the State of Mississippi, by service upon J. U. Lavillebeune, his attorney in fact, residing in New Orleans; and upon John Freeland, Mark Davis, Paul Tulane, J. G. Bernard, Xavier Lambert, Daniel Weaver, Samuel Gardiner Blanchard, Francis M. Fisk, Thomas M. Doyle, and Francis H. Hatch, all residing in New Orleans, by service in conformity with the law; that said several defendants be held to account to petitioner towards the satisfaction of said mortgage for all the income, rent, and revenue of said property from the service of this petition; and that they be required to shew cause, if any they have, why the said property be not seized and sold to satisfy the said mortgage of petitioner according to law; and petitioner prays that said mortgaged premises be decreed and ordered to be so seized and sold to satisfy the aforesaid balance due on said mortgage, with interest, and for such other relief as the law in such cases permits or provides.

(Signed) LOCKETT & MICOU,
And R. H. WILDE,
*For plaintiff.*

Personally appeared Samuel J. Peters, president of the City Bank of New Orleans, who being duly sworn doth depose and say, that the debt, to wit, the said balance of forty-four thousand dollars with interest, as stated in the foregoing petition, for which the seizure of property is demanded, is really due to said City Bank of New Orleans, and that the said Bank has in vain demanded payment from said Banks and Wife, and from F. B. Conrad, esq., assignee in bankruptcy of said Thomas Banks, more than thirty days previous to the institution of this suit.

(Signed) SAMUEL J. PETERS.

Sworn to and subscribed before me, this 22d April, 1844.

(Signed) O. P. JACKSON, *Judge*.

*Protest annexed to the foregoing petition and referred to therein.*

UNITED STATES OF AMERICA,
*State of Louisiana.*

By this public instrument of protest be it known, that on this twelfth day of December, in the year one thousand eight hundred and forty-three,

at the request of the City Bank of New Orleans, holder of the original bond or obligation, whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said bond or obligation to F. B. Conrad, esq., assignee of the estate of Thomas Banks, one of the subscribers, and demanded payment of the balance due thereon, (to wit, $44,000,) agreeably to its tenor, and was answered that the same could not be paid.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said bond or obligation, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered for want of payment of the said bond or obligation.

This done and protested in the presence of E. Granet and A. Commandeur, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.]

(Signed) H. B. CENAS, *Not. Pub.*

Know all men by these presents, that we, the undersigned, Thomas Banks, of the city of New Orleans, State of Louisiana, and Charlotte Fogarty, his wife, duly assisted and authorized by the said Thomas Banks for the validity of these presents, do acknowledge ourselves to be jointly and in solido indebted unto the president, directors, and company of the City Bank of New Orleans in the sum of fifty-five thousand dollars, current money of the United States, being the amount of a loan on mortgage made to us on the seventeenth day of June instant, by the said president, directors, and company of the said City Bank of New Orleans, which said sum of fifty-five thousand dollars we have this day received, and which we hereby bind and obligate ourselves, jointly and severally, and in solido, and our heirs, executors, administrators and assigns, to pay to the president, directors, and company of the said City Bank of New Orleans, at their banking house in this city, on the thirtieth day of June, eighteen hundred and thirty-eight, without any days of grace, and conformably to the clauses, privileges, and restrictions contained in an act of mortgage this day given by us to the said Bank to secure the payment of the said loan, and passed before Hilary Breton Cenas, a notary public in this city.

In faith whereof we hereunto subscribe our names at the said city of New Orleans, on this thirtieth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, in the presence of Joseph J. Wickes and Robert Taylor, witnesses of lawful age, and domiciliated in this city.

(Signed) THOS. BANKS,
C. BANKS,
R. TAYLOR,
J. J. WICKES.

2,200 dolls. *City Bank, New Orleans, 29th August*, 1840.

Received from Thomas Banks the sum of twenty-two hundred dollars on the within obligation, being the amount of this note for the same sum paid on the 3d August.

(Signed) R. I. PALFREY, *Cashier.*

8,800 dolls. *City Bank, New Orleans, 10th Dec.*, 1840.

Received from Thomas Banks the sum of eight thousand eight hundred dollars on the within obligation, being amount of his four notes for $2,200 each, paid at different times.

(Signed) R. I. PALFREY, *Cashier.*

CITY BANK
vs.
HOUSTON et als.

Mr. Gardere will please give to Mr. Bedlock the original bond for $55,000, filed in above suit, and file this as our receipt for the same.

May 7th, 1845. (Signed) WM. C. MICOU.

Received May 19, '45, above bond.

(Signed) W. BEDLOCK.

*Citations.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. William Houston, a resident of England, through Peter Maxwell, his attorney in fact, residing in New Orleans.

CITY BANK OF N. O.,
vs.
WILLIAM HOUSTON and others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) PL. DEVERGES, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on same day served copy of petition and citation on Peter Maxwell, agent of Wm. Houston, in person.

Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Deputy sheriff C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Louis Arbeau Caillaret, a resident of the State of Mississippi,

through J. U. Lavillebeuve, his attorney in fact, residing in New Orleans.

CITY BANK OF N. O.,
vs.
WILLIAM HOUSTON and others. } No. 6611.

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Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) PL. DEVERGES, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the 26th served a copy of petition and citation on J. U. Lavillebeuve, agent of Caillaret in person.

Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Deputy sheriff C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. John Freeland, residing in New Orleans.

CITY BANK OF N. O.,
vs.
WILLIAM HOUSTON & others. } 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) PL. DEVERGES, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the 26th served copy of petition and citation on Jno. Freeland, in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. sheff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Mark Davis, residing in New Orleans.

CITY BANK OF N. O.,
vs.
WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in

the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) PL. DEVERGES, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the 8th served copy of petition and citation on Mark Davis in person. Returned May 10th, 1844.

(Signed) ARM. GUYOL, *Dy. sheff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Paul Tulane, residing in New Orleans.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) R. GARDERE, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the 26th served copy of petition and citation on Paul Tulane in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. sheff. C C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. J. G. Bernard, residing in New Orleans.

CITY BANK OF NEW ORLEANS, vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) R. GARDERE, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the 1st May served copy of petition and citation on the defendant, S. G. Bernard, in person. Returned May 3rd, 1844.

(Signed) ARM. GUYOL, *Dy. sheff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Xavier Lambert, residing in New Orleans.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) R. GARDERE, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the 26th served copy of petition and citation on Xavier Lambert in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. sheff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Daniel Weaver, residing in New Orleans.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) R. GARDERE, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the same day served copy of petition and citation on Daniel Weaver in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. sheff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Samuel Gardiner Blanchard, residing in New Orleans.

CITY BANK OF NEW ORLEANS, vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) R. GARDERE, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the same day served copy of petition on S. G. Blanchard in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. shff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Francis M. Fisk, residing in New Orleans.

CITY BANK OF N. ORLEANS, vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) R. GARDERE, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the same day served copy of petition and citation on F. M. Fisk in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. shff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Thomas M. Doyle, residing in New Orleans.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in

the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) WOLMAR BON, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the same day served copy of petition and citation on Thomas M. Doyle in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. shff. C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Francis Hanson Hatch, residing in New Orleans.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 24th day of April, in the year of our Lord 1844.

[SEAL.] (Signed) WOLMAR BON, *Dy. clerk.*

*Service.*

Received April 25th, 1844, and on the same day served copy of petion and citation on Francis Hanson Hatch in person. Returned April 27th, 1844.

(Signed) ARM. GUYOL, *Dy. shff. C. C.*

*Exception of F. M. Fisk, filed 2nd May,* 1844.

CITY BANK OF NEW ORLEANS, vs. WILLIAM HOUSTON et als. } Commercial court.

And now comes into court Francis M. Fisk, one of the defendants cited in the above entitled suit, and files this his declinatory exception thereto. He avers that this court cannot exercise jurisdiction herein, for this, to wit:

That all the acts, matters, and things, which petitioners seek to controvert and put in issue in this suit, were done under and by virtue of the bankruptcy of Thomas Banks, and arose under the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed on the 19th day of August, 1841; and

that jurisdiction, in all matters arising under said act, and of all things done by virtue of the bankruptcy of any individual, decreed in accordance with its provisions, is by the term of said act, and the legal construction of the same, exclusively vested in the federal tribunals of the country. Wherefore, this defendant prays the dismissal of this suit at costs of petitioner.

By his att'y—(Signed) FRANCIS H. UPTON.

*Answer of Xavier Lambert, and call in warranty.*

Filed 6th May, 1844.

City Bank, vs. Wm. Houston & al. } Commercial court.

Now appears Xavier Lambert, one of the defendants in this suit, who for his separate answer, by M. Grivot and C. Roselius, his attorneys, denies generally all the allegations contained in plaintiff's petition, except so far as hereinafter is expressly admitted.

This respondent avers, that on or about the 30th July, 1842, Thomas Banks applied for the benefit of the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States, approved 19th August, 1841," to the United States district court of the eastern district of Louisiana, sitting in bankruptcy, and on his schedule, filed in said court, the plaintiffs are placed as creditors; that on the 5th September, 1842, he was duly declared a bankrupt by said court, and F. B. Conrad, esq., appointed assignee to his estate; that he subsequently, to wit, on the 9th September, 1842, filed his petition for his discharge, and no opposition being made, he, on the day of hearing, to wit, the 5th December, 1842, obtained his discharge by virtue of the law and the decree of the said court.

This respondent shews, that on the 23d December, 1842, the assignee of said bankrupt estate petitioned for the sale of the bankrupt's estate, amongst which was Banks' arcade, which order was granted on the 6th January, 1843, and the further order, that the assignee be authorized to cancel the mortgages recorded against the property; that the Bank's arcade was advertised for sale, and the United States marshal of the eastern district of Louisiana, on the 13th Febr'y, 1840, on which day, respondent being the highest and last bidder on lot No. 9 of said Bank's arcade, and described in the petition, for the sum of six thousand and fifty dollars, the same was adjudicated to them free from the mortgages, &c.; the whole of which will more fully appear by a copy of the act of sale passed before J. B. Marks, notary, on the 25th March, 1843, annexed hereto for reference.

This respondent shews, that the recorder of mortgages refused, before the order given on the 6th January, 1843, as stated above, to raise and cancel the mortgages recorded in his office against the aforesaid property; that on the petition of the assignee aforesaid, specially, a new order was granted on the 24th February by the United States district court

sitting in bankruptcy that the mortgages, &c., be raised; but the recorder of mortgages, doubting the right and power of the aforesaid court to compel him to raise and cancel the mortgages recorded in his office against the property aforesaid, refused to do so, and the assignee of said estate, on the 6th March, 1843, instituted proceedings before the hon. the parish court, in and for the parish and city of New Orleans, against the recorder of mortgages, to compel him to raise and cancel said mortgages; the said recorder appealed to the hon. the supreme court, and which decision of the parish court was affirmed on the 29th May, 1843, and the recorder of mortgages did raise and cancel said mortgages.

This respondent that he has acted in good faith throughout the whole of the transactions; that he has complied with the terms and conditions of the sale, so far as to the payment of the cash and the notes given by him, which have already become due; and he avers that F. B. Conrad, assignee of said Thomas Banks' estate, is bound to warrant and defend him in the premises.

Wherefore this respondent prays that Francis B. Conrad, of New Orleans, assignee of the bankruptcy of Thomas Banks, be cited in warranty; that he be served with a copy of plaintiffs' petition, and of this answer and call in warranty; that, after due proceedings had, plaintiffs be condemned to pay costs; and in case there should be judgment against this respondent in favor of plaintiffs, that the same judgment be rendered in favor of this respondent against F. B. Conrad, the assignee of said bankrupt's estate, with costs, &c.; and for all general relief, &c.; and as in duty bound.

(Signed) M. GRIVOT &
C. ROSELIUS, *of counsel.*

*Citation.*

STATE OF LOUISIANA,
*Commercial court of New Orleans:*

Mr. Francis B. Conrad, of New Orleans, assignee of Thomas Banks.

CITY BANK OF N. O.,
vs.
WILLIAM HOUSTON & others. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition, answer, and call in warranty, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 6th day of May, in the year of our Lord 1844.

[SEAL.] (Signed) WOLMAR BON, *Dy. clerk.*

*Service.*

Received May 6th, 1844, and on the 10th served copy of petition, answer, on F. B. Conrad, esq., assignee, in person. Returned May 13th, 1844.

(Signed) ARM. GUYOL, *Dy. shff. C. C.*

*Houston et als.* vs. *City Bank of New Orleans.*

*Answer of J. D. Weaver, filed 16th May*, 1844.

CITY BANK
vs.
WM. HOUSTON and als. } Commercial court.

Joseph D. Weaver, a resident of New Orleans, one of the defendants in this suit, now comes into court, by L. Eyma and H. H. O'Callaghan, his counsels, and answering, under the reserve of all legal exceptions, plaintiffs' petition, denies all and singular the allegations therein contained. And this respondent further says that the lot of ground No. 10. and buildings thereon, making part of the property known as "Banks' arcade," was properly and legally sold to this defendant by the marshal of the U. S. district court of the eastern district of La., sitting in bankruptcy, and that the mortgages and liens thereon existing were also properly and legally raised; said sale having been made, and said mortgages raised, by the assignee of the estate of Thomas Banks, after said assignee had obtained from the said U. S. dist. court a decree ordering said sales and the erasure of said mortgages; that before the said decree was issued all creditors and persons, plaintiffs included, interested and holding mortgages and liens upon the said property, were duly cited to appear and oppose, if they thought proper to do so, and that no opposition was made to the said sale or erasure of said mortgages by the plaintiffs. And this respondent further avers that said Thos. Banks, on or about the 30th of July, 1842, applied to the said U. S. district court for the benefit of the act, entitled "an act to establish a uniform system of bankruptcy throughout the United States, approved 19th of August, 1841," and that his schedule filed in said court, in which schedule the plaintiffs are placed as creditors; that in the month of September next said Banks was duly decreed a bankrupt by said court, and F. B. Conrad, esq., appointed assignee to his estate; and that in the month of December, 1842, said Banks obtained a discharge by virtue of a decree of said court.

And this respondent further shews, that on or about the 6th January, 1843, an order was granted by said United States district court for the sale of "Bank's arcade," and also that the further order was issued, authorizing the said assignee to cancel the mortgages recorded against the said property; that said property was advertised for sale in the manner required by law, on the 15th day of February, 1843, on which day, and at which public sale, this defendant being the highest and last bidder for lot No. 10, of said Banks' arcade, described fully in the annexed copy of the act of sale, passed before J. B. Marks, esq., notary public, on the 7th day of June, 1843, for the sum of nine thousand dollars, the same was adjudicated to him free from mortgages, as it will more fully appear by reference to the said act.

And this respondent further shews, that the recorder of mortgages had at the time refused to raise the mortgages which existed on the property surrendered by said Banks, and that said recorder of mortgages was compelled to erase the same by a judgment of the parish court in

the suit of F. B. Conrad, assignee of the estate of Thomas Banks, praying a mandamus, &c., which judgment was affirmed by the honorable the supreme court on the 29th of May, 1843, No. 5,195.

And this respondent further says, that the amount of the respective rights on the property of an insolvent being vested by the effect of the said act of Congress in the assignee, they can only be claimed out of the proceeds of the sale of the said property before the United States district court, and that plaintiff cannot claim, in the way he now does, the benefit of a mortgage which was *erased before* he instituted this suit, and which does not exist on the books kept for the purpose of registering mortgages.

And this respondent further shews, that having acted in good faith in all this transaction, and having complied with the terms of the sale made unto him of said lot No. 10, said F. B. Conrad, assignee of said estate of said Banks, is bound to warrant and defend him in the premises.

Wherefore, this respondent prays that said F. B. Conrad of this city, assignee of the bankruptcy of Thomas Banks, be cited in warranty; that he be served with a copy of plaintiff's petition, and of this answer and call in warranty; that this defendant be dismissed with costs; and in case there should be judgment against this defendant in favor of plaintiff, that the same judgment be rendered against said Conrad in his said capacity with costs; and this defendant also prays for all such other relief as the nature of this case and his defence may require. And, as in duty bound, &c.

(Signed) L. EYMA & H. H. O'CALLAGHAN,
*Attorneys for J. D. Weaver.*

*Exception of W. Houston and others. Filed 1st June*, 1844.

CITY BANK OF NEW ORLEANS,
vs.
WILLIAM HOUSTON et al.

*In the commercial court of New Orleans.*

William Houston, through his attorney in fact, Peter Maxwell, John Freeland, S. G. Blanchard, F. H. Hatch, Thomas M. Doyle, Mark Davis, L. A. Caillaret, and J. G. Bernard, through his attorney in fact, J. U. Lavillebeuve, now come into court through their counsel, and except to the above entitled suit, and to the jurisdiction of this court, and aver that they hold the property described in the petition, or such portions thereof as are owned by them respectively under sales made to them by the assignee of Thomas Banks, a bankrupt, as alleged in said petition, in compliance with an adjudication thereof to them at public auction, made by the United States marshal, in virtue of, and in obedience to, the proceedings, decrees, and judgments had in and rendered by the district court of the United States for the eastern district of Louisiana, wherein said bankruptcy was and is still pending,

and by the judgment of which said court plaintiff's mortgage on said property was ordered to be cancelled, and was in fact cancelled; and that all matters and things set up and attempted to be put at issue in the present action, were had and done under and by virtue of the said proceedings in bankruptcy, and arose under the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States;" and that all matters arising thereunder must be determined by the said district court of the United States, and that this court has no jurisdiction in the premises.

Wherefore they pray to be hence dismissed with their costs.

By F. B. CONRAD,
*Attorney for defendants.*

*Notices of trial of exception.*

Commercial court of New Orleans.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & al. } No. 6611.

To F. H. Upton, esq., attorney of F. M. Fisk.

SIR: Take notice, that the exception filed in this case is fixed for trial on Thursday, 6th of June, instant, at 9 o'clock A. M.

New Orleans, 1st June, 1844.

(Signed) PL. DEVERGES, [SEAL.]
*Deputy clerk.*

*Service.*

Received June 1st, 1844, and on the 4th served copy of the within notice on F. H. Upton, esq., in person. Returned 6th June, 1844.

(Signed) ARM. GUYOL,
*Deputy sheriff, C. C.*

STATE OF LOUISIANA,

*Commercial court of New Orleans.*

CITY BANK OF N. O., vs. WILLIAM HOUSTON & als. } No. 6611.

F. B. Conrad, esq. Take notice, that the exception filed by you in the above entitled case is fixed for trial on Thursday, 6th June, 1844, at 9 o'clock, A. M.

Clerk's office, 3d June, A. D. 1844.

(Signed) R. GARDERE, [SEAL.]
*Deputy clerk.*

*Service.*

Received June 3d, 1844, and on the 4th served copy of the within notice on F. B. Conrad, esq., in person. Returned June 6th, 1844.

(Signed) ARM. GUYOL, *Dy. shff., C. C.*

*Continuance of trial of exceptions.*

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

By consent the exceptions herein filed were continued until Monday next, at 9 o'clock, A. M.

(Extract from the minutes, 6th June, 1844.)

*Default against Pl. Tulane and D. Weaver.*

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

On motion of W. C. Micou, of counsel for plaintiffs, and on showing to the court that the defendants, P. Tulane and D. Weaver, have failed to answer, though duly cited. Ordered, that judgment by default be rendered against said defendants.

(Extract from the minutes, 6th June, 1844.)

*Consent, filed 8th June*, 1844.

CITY BANK OF N. O., vs. WILLIAM HOUSTON & others. } No. 6611.

Commercial Court.

On motion of L. Eyma and H. H. O'Callaghan, of counsel for Daniel Weaver, one of the defendants in this suit, and with consent of plaintiffs' counsel, it is ordered that the answer filed by error on the 16th day of May last, 1844, in the name and behalf of Joseph D. Weaver, instead of Daniel Weaver, be so amended that the name of Daniel Weaver be substituted to that of Joseph D. Weaver therein, said Joseph D. Weaver having sold to said Daniel Weaver, the defendant aforesaid, all his rights and titles to the portion of the building known as "Banks's arcade," for which property said Daniel Weaver is now sued, and that the judgment by default entered on the 6th of this present month of June, 1844, against said Daniel Weaver, be set aside.

No objection to the above.

(Signed) MICOU, *for plaintiff.*

*Order setting aside default against Weaver.*

CITY BANK OF N. O., vs. WILLIAM HOUSTON & al. } No. 6611.

On motion of L. Eyma, of counsel for Daniel Weaver, one of the defendants in this case, and with consent of plaintiffs' counsel, ordered that the answer filed by error on the 16th ultimo, in the name and on

behalf of Joseph D. Weaver, instead of Daniel Weaver, be so amended that the name of Daniel Weaver be substituted to that of Joseph D. Weaver therein; said Joseph D. Weaver having sold to said Daniel Weaver all his right and title to the portion of the building known as "Banks' arcade," for which property said Daniel Weaver is now sued, and that the judgment by default herein rendered on the 6th instant be set aside as to said Daniel Weaver.

(Extract from the minutes, 8th June, 1844.)

*Order overruling exceptions.*

CITY BANK, OF N. O., vs. WILLIAM HOUSTON et als. } No. 6611.

The exceptions filed in this case came on for hearing this day, as continued from Thursday last.

W. C. MICOU, *for plaintiffs.*
L. PIERCE, *for defendants.*

After hearing argument, the court overruled the same, reserving to the defendants the right of pleading the same in their plea or answer to the merits.

Extract from the minutes, 10th June, 1844.

*Answer of F. M. Fisk, filed 11th June, 1844.*

CITY BANK of New Orleans, vs. WILLIAM HOUSTON et als. } Commercial Court.

Francis M. Fisk, one of the defendants cited in the above entitled suit, in case the exception which he has herein filed be overruled, files this his separate answer to the petition of the plaintiffs.

He avers that the pretended bond or monied obligation, set forth in the petition as executed to plaintiffs by Thomas Banks and wife, and which they herein seek to enforce upon the property of this defendant and others, is discharged and extinguished. That the said Thomas Banks, on the 30th day of July, 1842, filed his petition in the district court of the United States for the eastern district of Louisiana, praying for the benefit of the provisions of the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States;" that thereafterwards, to wit, on the 5th day of September next ensuing, and after having duly complied with all the requisitions in said act set forth, he was declared a bankrupt by the decree of said court; that on the 9th day of said September, the said Thomas Banks filed his petition in said court praying to be discharged from all his debts, contracts, and engagements; and that thereafterwards, to wit, on the fifth day of December, then next, and after having complied with all the provisions and prerequisites set forth in said act of Congress, the debts, contracts, and engagements of the said Thomas Banks, existing at the time of filing his first mentioned petition, were,

by the judgment and decree of said district court of the United States, fully and completely discharged and extinguished; and this defendant avers that, by the terms of the said act of Congress, he is entitled to plead said judgment of discharge and extinguishment, and he does so plead the same, as a full and complete bar to this suit, in which the plaintiffs are seeking to enforce the payment of said discharged and extinguished obligation upon the property of this defendant. And this defendant further answering avers, that by virtue of the decree of said district court of the United States, by which the said Thomas Banks was declared a bankrupt, all the property and rights of property of the said Thomas Banks became vested in the assignee of said Banks, appointed by said court for the benefit of all his creditors; and thereafterwards the assignee of said Banks, in compliance with the provisions of said act of Congress, duly filed his petition in said court, praying for leave to make sale of said property thus in him vested for the benefit of the creditors of said Banks; that after due and legal proceedings had thereon, and notification to creditors and all parties therein interested to oppose said sale, if they should see cause, the said court ordered the sale of the said property; and this defendant avers, that in compliance with said order of sale the marshal of the United States, after a full compliance with all the required formalities, on the day of 1843, made sale of the property described in the petition of the plaintiffs, and at said sale a portion thereof was adjudicated to this defendant as the last and highest bidder therefor. And defendant further avers, that said property was purchased by him, and adjudicated and passed to him free from all encumbrance whatsoever. That so far from being notified of the existence of the mortgage upon the property set forth in the petition as alleged, defendant was notified and informed at the time of the execution of the act of sale to himself, by the certificate of the recorder of mortgages, that no mortgage whatsoever existed upon the said property in the name of Thomas Banks.

And defendant further answering declares, that he is informed, and so avers, that the assignee of said Thomas Banks, in order that he might convey to the purchasers of the property of said bankrupt an unincumbered title of the same, filed his petition in said district court of the United States, praying for an order and decree of said court, that all mortgages and incumbrances on said property should be cancelled and erased; and that after due notice to all parties interested therein, and after due proceedings had upon said petition, the said court ordered and decreed the cancelling and erasure of all mortgages upon said property, with reservation to the mortgage creditors of their privileges upon the proceeds of said property in the hands of said assignee, according to the priority of their mortgage securities.

And this defendant is further informed, and so avers, that the recorder of mortgages demurred to comply with said decree of said district court; whereupon the said assignee filed his petition in the parish court of the parish of Orleans, praying for the writ of mandamus of said court, directed to the said recorder of mortgages, ordering him to

erase and cancel the incumbrances created by Thomas Banks upon his property as aforesaid. That after due and legal proceedings had upon said petition, the said parish court rendered a final judgment therein in favor of the prayer of the petitioner and ordered a peremptory mandamus to issue. That thereupon the said recorder of mortgages appealed from said judgment to the supreme court of Louisiana; and defendant avers, that the said supreme court, after a full and elaborate argument of counsel of all the questions involved therein, confirmed the judgment of the parish court. Whereupon, and in compliance with the judgment and decree of the supreme court of Louisiana, the recorder of mortgages did forthwith annul, cancel, and erase the mortgages then existing upon the property described in plaintiffs' petition, created by the said Thomas Banks. Wherefore defendant avers, that said pretended mortgage from said Banks to plaintiffs was legally erased and extinguished in compliance with the judgment of the supreme court of Louisiana, and of the district court of the United States. And of all and singular the premises herein set forth, the plaintiffs herein were duly notified. Wherefore, defendant shews in conclusion of this his answer to plaintiffs' petition, that no such debt as that therein described has now any legal existence; that the same has been fully and completely discharged by operation of law; that no such mortgage as that described in the plaintiffs' petition has now any legal existence; that the same has been erased, cancelled, and annulled, by operation of law, and in obedience of the judgment of the Federal and State tribunals. And defendant also denies the compliance by plaintiffs with the legal prerequisites of demand and notice to the institution of the hypothecary action against third possessors; and reserving to himself any right of action which he may have against the plaintiffs for any damage which he may suffer by reason of their slander of his title and the institution of these proceedings, prays the dismissal of the same at plaintiffs' costs.

(Signed) FRANCIS H. UPTON,
*Atty. for defendant, F. M. Fisk.*

*Order and reasons to extend time to answer.*

CITY BANK of N. O.
vs.
WILLIAM HOUSTON et al. } No. 6611.

On motion of Levi Pierce, of counsel for defendants, it is ordered, that defendants be allowed ten days from this day to answer in this case for the reasons on file.

(Extract from the minutes, June 13th, 1844.)

*Reasons filed June 13th, 1844.*

That there are a number of defendants, and copies of their titles have not yet been wholly made out, as also copies of proceedings in the United States court, which are required before answer can be prepared.

*Answer of Houston, Bernard, Doyle, Davis, Freeland, Tulane and Hatch. Filed 3d September*, 1844.

HOUSTON et als. adv's CITY BANK. } Commercial Court.

The defendants come, and answering to the petition deny the allegations of plaintiffs, and aver that the said bank has no mortgage on the properties now possessed by them. And they aver that they purchased the same according to their several titles, as will more fully appear by the copies annexed and prayed to be made part of this answer, by virtue of adjudications made by the United States marshal for the eastern district of Louisiana, on the 15th of February, 1843, in pursuance of a decree of the United States district [court] for the eastern district of Louisiana, of the 6th of January, 1843, the said court sitting as a court of bankruptcy, in the matter of the bankruptcy of Thomas Banks, and confirmed according to law by a sale from F. B. Conrad, assignee of said bankrupt, by acts before Joseph B. Marks, notary, dated the 7th of June, 1843, and clear of all mortgages, the same having been cancelled by order and judgment of said court in said case, and by judgment of the parish court for the parish and city of New Orleans, in the matter of F. B. Conrad, assignee of Thomas Banks, vs. Denis Prieur, recorder of mortgages for the parish and city of New Orleans, confirmed by judgment of the supreme court of the State of Louisiana, on the day of

And the defendant, Jonathan G. Bernard, paid to the said assignee the sum of six thousand six hundred dollars for his share of said property, being lot No. "seventeen," on a plan drawn by James A. Dakin, on the 5th of January, 1843, and deposited in the office of said Marks, notary of this city, as plan "forty-eight" in his book of plans.

And the said William Houston paid seven thousand six hundred dollars to said assignee for lots number "fifteen," "sixteen," and "seventeen," on said plan; and twenty-five thousand one hundred and fifty dollars for lots marked "four" and "five," on said plan; and six thousand three hundred dollars for lot number "six."

And the defendant, Thomas M. Doyle, paid to said assignee three thousand five hundred dollars for lot number "nineteen," on said plan.

And the defendant, Mark Davis, paid to said assignee six thousand nine hundred dollars for lot number "two," on said plan; and six thousand five hundred dollars for lot number "three," on said plan.

And the said John Freeland paid to said assignee eleven thousand nine hundred dollars for lot number "one," on the aforesaid plan.

And the said defendant, Paul Tulane, paid to said assignee for lot number "eleven," on said plan, eight thousand one hundred dollars.

And the said defendant, Francis H. Hatch, paid to said assignee for lot number "twenty," on said plan, three thousand three hundred dollars.

And these defendants deny the right of said plaintiffs to proceed upon

any pretended mortgage against these defendants, as third possessors of their purchases as aforesaid, under judgments and decrees of courts erasing all mortgages. That the said judgments, decrees, orders, and sales cannot be considered, and are in no manner nullities; and they plead the said judgments, decrees, orders, and sales in bar, and pray to be hence dismissed with fifty thousand dollars damages for said illegal and vexatious proceedings.

And these defendants pray, that F. B. Conrad, the assignee of said Thomas Banks, and who resides in this city, and the Canal and Banking Company of New Orleans, to whom the said money has been paid, may be notified of these proceedings, that they may come in and defend, if they think proper; and that if judgment be had against these defendants, that they may return the said several sums of money, so paid by these respondents, with all costs and interest; and they also pray, that Denis Prieur, the recorder of mortgages, residing in New Orleans, may also be notified to appear and defend; and, if these defendants be cast herein, that he may pay to said defendants the sum of twenty thousand dollars each, damages caused by said raising of mortgages, and the giving a clear certificate under which they severally purchased.

And your respondents shew that they are owners and possessors in good faith, that the said City Bank was cognizant of all the judgments, decrees of sale, sales by the marshal and assignee, decrees of the parish and supreme courts relative to their alleged mortgages, and that they are bound and barred by said knowledge and notice; and that the present attempt to injure them is in bad faith, and that they are liable for the damages aforesaid.

And these respondents, so owning and possessing, have made improvements, and expended money on said properties to the amount of fifteen thousand dollars each, which they submit must, under any circumstances or adverse judgment of this court, be first allowed and paid to them by said City Bank; and they pray for all further and other relief, and to be hence dismissed, &c., &c.; and as in duty, &c.

LEVI PEIRCE,
*Of counsel for respondents.*

(Signed,) By JOHN GEDGE, *Atty.*

*Citations.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

To the Canal and Banking Company of New Orleans.

CITY BANK
vs. } No. 6611.
WM. HOUSTON et al.

You are hereby summoned to comply with the demand contained in the petition, and in the answer of Wm. Houston and others, copies of which accompany this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

[REC. , D. T. 1847.]—4

Witness the honorable Charles Watts, judge of the said court, the 5th day of September, in the year of our Lord 1844.

[SEAL.] (Signed,) ED. GARDERE, *Clerk.*

*Service.*

Received Sept. 5th, 1844, and on the 6th served copy of petition, answer, and citation on the plaintiffs, through N. N. Wilkinson, their cashier. Returned Sept. 10, 1844.

(Signed,) ARM. GUYOL, *Dy. Sff.*, *C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. F. B. Conrad, assignee of Thomas Banks.

CITY BANK
vs.
WM. HOUSTON & al. } No. 6611.

You are hereby summoned to comply with the demand contained in the answer of Wm. Houston and others, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 5th day of September, in the year of our Lord 1844.

[SEAL.] (Signed,) ED. GARDERE, *Clerk.*

*Service.*

Received Sept. 5th, 1844, and on the 6th served copy of petition, citation, answer, &c., on F. B. Conrad, esq., in person. Returned Sept. 10th, 1844.

(Signed,) ARM. GUYOL, *Dy. Shff.*, *C. C.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

Mr. Denis Prieur, recorder of mortgages for the parish and city of New Orleans.

CITY BANK
vs.
WM. HOUSTON & als. } No. 6611.

You are hereby summoned to comply with the demand contained in the petition and in the answer of Houston and others, of which copies accompany this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 5th day of September, in the year of our Lord 1844.

[SEAL.] (Signed,) ED. GARDERE, *Clerk.*

*Service.*

Received September 5th, 1844, and on the 6th served copy of an-

swer, petition, and citation on D. Prieur in person. Returned Sept. 10th, 1844.

(Signed,) ARM. GUYOL,
*Dy. Shff., Com. Court.*

*Answer of Denis Prieur.—Filed 15th Nov.*, 1844.

CITY BANK OF NEW ORLEANS
vs.
WILLIAM HOUSTON. } In the commercial court.

Denis Prieur, recorder of mortgages, &c., now comes into court by his attorney, and for answer to the original petition and call in warranty, says, that he denies all and singular the allegations therein contained, so far as they have any tendency to charge this respondent with any debt or responsibility towards any of the parties; and he further expressly denies the right of the defendant to call this respondent in warranty; and for further answer this respondent says, that he erased and cancelled the inscription of the mortgage referred to in the plaintiffs' petition, in obedience to, and in virtue of, two judgments rendered against him; the first of which judgments was rendered by the hon. the parish court in and for the parish and city of New Orleans, and the second by the honorable the supreme court of the State of Louisiana. And this respondent further says, that he was ordered to erase and cancel said mortgage by a decree of the honorable the district court of the United States sitting in bankruptcy.

Wherefore this respondent respectfully prays to be hence dismissed with costs; and he prays for all such other and further aid, relief, and remedy as the nature of his case may require and the law will permit; and as in duty bound he will ever pray, &c., &c.

(Signed,) C. ROSELIUS, *Atty.*

*Continuance.*

CITY BANK OF NEW ORLEANS
vs.
WILLIAM HOUSTON & al. } No. 6611.

This case came on this day for trial before the court.

MICOU & WILDE, *for plaintiffs.*
GRIVOT & CONRAD, *for defendants.*

After hearing pleadings and evidence, the same was continued until Thursday week, at 10 o'clock, A. M.

(Extract from the minutes, April 16th, 1845.)

*Answer of Caillaret and Blanchard.—Filed April 24th*, 1845.

CITY BANK OF NEW ORLEANS
vs.
WILLIAM HOUSTON & others. } Commercial court of New Orleans.

Louis A. Caillaret and S. G. Blanchard, two of the defendants in the above entitled suit, now come into court, and for answer to the plain-

tiffs' petition make the same pleas that have been heretofore made by J. B. Bernard, William Houston, Thomas M. Doyle, John Freeland, Paul Tulane, and F. H. Hatch and others, defendants herein, and join in the defence made by said parties, as set up and contained in their answer filed herein on the 3d September, 1844; and pray that said pleas and matters of defence may be considered as herein and specially made and repeated by them; and for all general relief, and to be dismissed hence with their costs; and as in duty, &c.

(Signed,) By L. PEIRCE, and
F. B. CONRAD,
*Attys. for defendants.*

*Testimony.—Filed April 24th*, 1845.

Plaintiff introduced in evidence the original bond, signed by Banks and wife, a copy of which is annexed to petition; also the protest of H. B. Cenas, dated 12th December, 1843, annexed to petition; also act of mortgage, passed 30th June, 1837, before H. B. Cenas, marked A, and the certificate of the recorder of mortgages thereto appended; also petition, answer, and judgment, in the case of City Bank vs. Banks and wife, in district court, copies of which will be filed in due time, for the purpose of proving that a demand has been made of Banks and wife, and that the same has been prosecuted to the judgment, and for no other purpose.

Plaintiff introduced in evidence the doc't B, for the purpose of giving an accurate description of those parts of the property in the possession of the several defendants.

By consent of the parties, the question of rents and improvements is received by the parties.

Defendants introduced in evidence acts marked C, D, E, F, G, H, I, J, K. Also record of suit 15,629, marked L, and act M.

*Document A.—Copy of mortgage of T. Banks & wife to City Bank.*

Filed with petition 23d April, 1844, filed in evidence 24th April, 1845.

STATE OF LOUISIANA,
*City of New Orleans.*

Be it known, that this day before me, Hilary Breton Cenas, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Thos. Banks, of this city, and with him also personally came and appeared Mistress Charlotte Fogarty, his wife, of lawful age, and by him duly herein assisted and authorized, who severally declared that they do by these presents acknowledge themselves to be justly and truly indebted unto the City Bank of New Orleans, a corporate body of this State, in the sum of fifty-five thousand dollars, being the amount of a loan made to them by the said Bank, in good current money, under a resolution of the board of directors thereof, passed on the seventeenth day of June instant, a certified copy of which is annexed in the margin hereof for reference; which said sum of fifty-five thousand dollars the said appear-

ers hereby bind themselves, severally and in solido, to reimburse and repay to said bank, in five equal instalments of one, two, three, four, and five years from the day of the date hereof; and, as an acknowledgment and proof of the said loan, the said appearers have delivered to Samuel Jarvis Peters, esq., president of the said Bank, here present, acting in his said capacity as such, their written obligation for the said sum of fifty-five thousand dollars, subscribed by them under date of this day, and made payable at the banking house of said bank, to the president, directors, and company thereof, in one year after date, which said bond or obligation has been paraphed "ne varietur," and countersigned by me, the notary, to identify it with this act according to law, and which is to be paid by the said appearers at the periods and in the manner hereinafter expressed, to wit:

It is expressly agreed and covenanted between the said parties:

First. That the said Mr. and Mrs. Banks may, and they accordingly hereby bind and obligate themselves severally, and in solido, to pay, at the expiration of each and every year for five years, in deduction of the said loan, the one fifth part thereof, but not less, as well as the amount of the discount for one year on the balance, for which they will remain indebted unto the said bank; it being well understood that the said bond or obligation, for the said sum of fifty-five thousand dollars, shall remain the possession of the president, directors, and company of the said bank; whose duty it shall be to enter as a credit on the back thereof the said several payments as they may be made in deduction of the said loan agreeably to these presents.

Second. That if the said Mr. and Mrs. Banks should fail to make the said payments, or any of them, in capital and interest, in the manner and form and at the periods stipulated above and fixed, then and in that case they shall lose the right of prolonging their said payments, or any of them, as well as other advantages which have been accorded to them in the premises; and shall, moreover, be subject to be prosecuted for the recovery of all sums for which they stand indebted unto the said bank by virtue of these presents, and by virtue of the said bond or obligation, as well in capital as in interest, and all costs incurred, or hereafter to be incurred.

And in order to secure the full and punctual payment of the said sum of fifty-five thousand dollars principal, together with the interest thereon, to be made and effected at the periods and in the manner above expressed and stipulated, the said Mr. and Mrs. Banks do by these presents specially mortgage and hypothecate unto the said City Bank of New Orleans, herein represented by the said Samuel Jarvis Peters, esq., president, and in his said capacity accepting all and singular the following described property, to wit: First. Seven lots of ground situate in the suburb Saint Mary, above this city, in the square bounded by Tchapitoulas, Gravier, Magazine, and Poydras streets, and designated by the numbers "twelve," "thirteen," "sixteen," "seventeen," "eighteen," "nineteen," and "twenty-four," and having the following dimensions in American measure, viz:

No. "twelve" measures twenty-two feet front on Natchez street, fifty-

seven feet six inches and one fifth in depth on the boundary line of lot No. nine; fifty-eight feet seven inches and four fifths on the boundary line of lot No. "thirteen," and twenty-two feet and half an inch in width on the rear line.

No. "thirteen" measures twenty-two feet front on Natchez street, fifty-eight feet seven inches and four-fifths in depth on the boundary line on lot "twelve," fifty-nine feet nine inches and two-fifths on the boundary line of lot No. "sixteen," and twenty-two feet and half an inch on the rear line.

No. "sixteen," measures twenty-two feet front on Natchez street, by fifty-nine feet nine inches and two-fifths in depth on the boundary line of lot No. "thirteen," sixty feet eleven inches in depth on the boundary line of lot No. "twenty-four," and twenty-two feet and half an inch in width on the rear line.

No. "twenty-four" measures twenty-two feet front on Natchez street, by sixty feet eleven inches in depth on the boundary line of said lot No. "sixteen," sixty-two feet one inch and two-fifths on the boundary lines of lots Nos. "seventeen," "eighteen," and "nineteen," and twenty-two feet and half an inch in width on the rear line.

No. "seventeen" measures twenty-two feet six inches front on Magazine street, by ninety feet nine inches in depth on one of the side lines; eighty-eight feet eight inches in depth on the other side line, and twenty feet eight inches and two-fifths in width on the rear line.

No. "eighteen," measures twenty-two feet six inches front on Magazine street, eighty-eight feet eight inches in depth on the boundary line of lot No. "seventeen," eighty-six feet seven inches in depth on the boundary line of lot No. "nineteen," and twenty feet eight inches and two-fifths in width on the rear line.

And No. "nineteen," measures twenty-two feet six inches front on Magazine street, by eighty-four feet six inches in front and depth on Natchez street, eighty-six feet seven inches in depth on the boundary line of lot No. "eighteen," and twenty feet eight inches and two-fifths in width on the rear line. All which property was acquired by the said Thomas Banks, by purchase from Matthew Morgan, by an act passed before Louis T. Caire, a notary public in this city, on the twenty-sixth day of May, eighteen hundred and thirty-one.

*Second.*—A certain irregular lot or portion of ground situate at, and forming one of the corners of Magazine and Gravier streets, in the said suburb St. Mary, measuring ninety-one feet nine inches front on Magazine street, by one hundred and twenty-six feet six inches in depth and front on Gravier street, one hundred and nine feet six inches in depth on the side line which separates it from the property now or late belonging to A. Labranche, and seventy-nine feet six inches in depth on the other side line which separates it from the property owned by the late Caleb D. Jordan, measuring back from Gravier street, (American measure.) Which portion of ground was acquired by the said Thomas Banks, by purchase from Mrs. C. B. Wray, by an act passed before William Christy, a notary public in this city, on the first day of March, eighteen hundred and thirty.

*Third.*—And two certain lots of ground situate in the same suburb between Gravier and Poydrass streets, and designated by the numbers "three" and "four," on a plan drawn by Joseph Pilie, city surveyor, on the twentieth day of May, eighteen hundred and thirty, and deposited in the office of Octave de Armas, a notary public in this city, on the fourteenth day of February, 1831. Said lot No. "three," measuring sixty feet front on Magazine street, by one hundred and fifty feet two inches in depth on the line separating it from lot No. "four," and one hundred and fifty feet six inches in depth on the other side line. And the said lot No. "four," measuring sixty feet front on said Magazine street, by the said depth on the line separating it from the said lot No. "three," and one hundred and forty-nine feet ten inches in depth on the other side line, (French measure;) which said two lots were purchased by the said Thomas Banks from Lucien G. Hiligsberg, by an act passed before G. R. Stringer, late a notary public in this city, on the eighth day of February, eighteen hundred and thirty-three. *Together* with all and singular the buildings and improvements now on the above described and detailed property, which said buildings consist principally of the public house known as "BANKS ARCADE," and all the appurtenances thereunto belonging.

And the said Mr. and Mrs. Banks moreover obligate and bind themselves, by these presents, not to sell, alienate, or encumber the above described property, nor any part thereof, nor to dispose of the same in any manner whatsoever, until the causes and ends for which the present mortgage has been granted shall have been satisfied and fulfilled, nor until the same mortgage shall have been finally raised; and if, against the true and strict intent and meaning of this present clause, the said mortgagers should sell, alienate, or encumber the said property, or any part thereof, or should dispose of the same in any manner, every such contract or disposition made to the prejudice of, or contrary to the conditions contained in this said clause, shall be null and void as respects the said bank, whose rights and privileges shall in no manner be altered or affected by any such sale, alienation, mortgage, or disposition whatsoever; the said bank reserving to itself the rights, privileges, and powers necessary, in case of failure on the part of the said mortgagers to comply with any of the obligations hereinbefore imposed upon them, to procure, at the request of the president, directors, and company of the said City Bank of New Orleans, the seizure and sale by execution of the property hereinbefore mortgaged, in whose hands soever, or any part thereof, the same may be found, in the same manner as if the same had not been transferred, and this too without the said bank being first compelled to prosecute the said Mr. and Mrs. Banks, or to obtain judgment against them, or in any manner discuss their property.

And the said mortgagers moreover formally renounce the benefit of all laws that may hereafter be passed, whether for the purpose of changing the present mode of proceeding in matters of seizure, or to grant longer delays to debtors, or to suspend payments; and finally, they renounce all laws passed, or to be passed, which in the least tend to in-

validate or weaken this contract, all laws to the contrary notwithstanding.

And the said Mrs. Banks, authorized as aforesaid by her said husband, and being apart from him, further declared, that in intervening in these presents she acted of her own accord, and with her own proper, free, and unbiassed will, with the view of furnishing to the said bank the best possible security for the said loan; whereupon I, the said notary, did read to the said Mrs. Banks the thirty-second section of an act, entitled "an act to incorporate the subscribers to the Bank of Louisiana," approved on the seventh day of April, 1824; as well as the eighteenth section of an act, entitled an "act to incorporate the City Bank of New Orleans," approved on the third day of March, 1831. And the said Mrs. Banks again declared, that she was well acquainted with the provisions contained in the said laws, and that she nevertheless persisted in the same will she had already manifested.

By reference to the annexed certificate of the recorder of mortgages in and for the city and parish, dated this day, it will appear that the said mortgaged premises are free from incumbrance, with the exception of the following mortgages, to wit:

1st. The one which the said Banks granted, together with his said wife, by an act passed before William Christy, notary, on the third day of May, 1834, to secure seventy-two thousand five hundred dollars.

2nd. The one he granted, also with his said wife, by an act passed before the same notary, on the twenty-seventh day of June, 1834, in favor of the same company, to secure the sum of forty thousand dollars.

3rd. The one he granted, with his said wife, by an act passed before the same notary on the 27th day of April, 1837, also in favor of the said company, to secure thirty-five thousand six hundred and ninety-four $\frac{58}{100}$ dollars.

4th. And the one he granted, also with his said wife, by an act passed before the same notary on the 25th day of May last, in favor of the New Orleans and Carrollton Railroad and Banking Company, to secure the sum of twenty-nine thousand seven hundred dollars.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Joseph J. Wicks and Robert Taylor, witnesses of lawful age, and domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, notary, this thirtieth day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

Original signed,

THOMAS BANKS,
C. BANKS,
SAM'L J. PETERS,
J. J. WICKES,
R. TAYLOR,
H. B. CENAS,
*Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my register. In faith whereof I grant these presents under [SEAL] my signature and the impress of my seal of office, at New Orleans, this fifth day of July, 1837.

H. B. CENAS, *Not. Pub.*

The undersigned, recorder of mortgages for the city and parish of New Orleans, certifies that the foregoing act of mortgage has been recorded this day in his office, book 37, folio 431, and that since the date of the certificate mentioned in the said act of mortgage, no other mortgage than the one granted by same act has been recorded against Mr. and Mrs. Banks on the property therein described.

New Orleans, the 6th July, 1837.

P. LANDREAU, *Recorder.*

Paid Banks. *Mortgages' office.*

The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies that the mortgage granted by Thomas Banks, per act passed before William Christy, notary, dated May the third, eighteen hundred and thirty-four, in favor of the New Orleans Canal and Banking company, on ten lots of ground in the faubourg St. Mary, more particularly described in said act, to secure seventy-two thousand five hundred dollars, ($72,500,) is this day diminished by payment of forty-eight thousand dollars, ($48,000,) as per act passed before the said notary, William Christy, dated the nineteenth day of July, 1837, a copy of which has been deposited this day in his office.

New Orleans, July the twentieth, 1837.

P. LANDREAU, *Recorder.* [SEAL.]

*Doc't B. Copy of process verbal of Banks' arcade.*

Filed April 24th, 1845.

In bankruptcy. F. B. Conrad, assignee of the estate of Thomas Banks, bankrupt.

In the district court of the United States, eastern district of Louisiana. No. 353.

In pursuance of, and by virtue of an order of court, bearing date 6 January, 1843, issued from the honorable the district court of the United States for the eastern district of Louisiana, I do hereby certify, that I did expose at public sale, on Wednesday, the 15th day of February, 1843, at 12 o'clock, M., at Banks' arcade, Magazine street, between Natchez and Gravier streets, the following property, surrendered by said bankrupt to his creditors, after legal advertisement for 20 days in will 1-10 Bee and Tropic, and that they were adjudicated to the following persons, they being the last and highest bidders, viz :

2nd. All that valuable space of ground, with the buildings and improvements thereon, situated in the square comprised between Magazine, Gravier, Tchapitoulas and Natchez streets, heretofore known as Banks' arcade, said property being divided into the following lots, as

per plan of James Daikin, dated 5th January, 1843, which plan will be exhibited on the day of sale; said lots measure in English measure as follows:

1st. Lot No. 1 forms the corner of Magazine and Gravier streets, and has a front of 24 feet $10\frac{5}{8}$ inches on Magazine street, by a depth and front on Gravier street of 59 feet $9\frac{1}{2}$ inches, 59 feet $8\frac{1}{4}$ inches on the line separating it from lot No. 2, and 26 feet $3\frac{1}{2}$ inches in width in the rear, together with the three story brick store thereon, which has been leased by the assignee till the 31st day of October next, at the rate of $2,000 per annum; adjudicated to John Freeland for eleven thousand five hundred dollars.

2nd. Lot No. 2 adjoins the above, and has a front on Magazine street of 23 feet 8 inches, and has a depth of 59 feet $8\frac{1}{4}$ inches on the line separating it from lot No. 1, and 59 feet 7 inches on the line separating it from lot No. 3, and 23 feet $5\frac{1}{2}$ inches in width in the rear, together with the three story brick store thereon; the 1st and 2d stories of which have been leased by the assignee till the 31st October next, at the rate of $1,260 per annum; adjudicated to Mark Davis for six thousand nine hundred dollars.

3rd. Lot No. 3 adjoins the above, and measures 23 feet 8 inches front on Magazine street, by 59 feet 7 inches deep on the line separating from lot No. 2, and 59 feet $5\frac{1}{2}$ inches on the line separating it from lot No. 4, and 22 feet $9\frac{1}{2}$ in width in the rear, together with the three story brick store thereon, which has been leased by the assignee till the 31st day of October next, at the rate of $1,400 per annum; adjudicated to Paul Tulane for Mark Davis, for six thousand four hundred dollars.

4th. Lot No. 4 adjoins the above, and has a front on Magazine street of 23 feet 8 inches, by a depth of 59 feet $5\frac{1}{2}$ inches on the line separating it from lot No. 3, and 59 feet four inches on the opposite side line separating it from lot No. 5, and 23 feet $9\frac{1}{2}$ inches in width in the rear, together with the brick building thereon, heretofore forming part of the Arcade Exchange room, from which it is separated by no partition wall; adjudicated to Wm. Houston for five thousand six hundred and fifty dollars.

5th. Lot No. 5 adjoins the aforementioned lot, and has an entire front on Magazine street of 71 feet, by a depth of 59 feet 4 inches on the line separating from No. 4, and of 58 feet $11\frac{1}{2}$ inches on the line separating it from lot No. 6, and 68 feet 4 inches in the rear, together with the brick building thereon. This property includes the whole space of the Arcade Exchange room, except that portion of it next to Gravier street, which has been taken off to form the above mentioned lot No. 4, and is together with said lot No. 4 under a lease expiring on the 25th day of April next, up to which date no rent will be received by the purchaser; adjudicated to Wm. Houston for nineteen thousand five hundred dollars.

6th. Lot No. 6 has a front of 23 feet 8 inches on Magazine street, by a depth of 58 feet $11\frac{1}{2}$ inches on the line separating it from lot No. 5, and 58 feet 10 inches on the line separating it from lot No. 7, and

22 feet 9⅓ inches in width in the rear, together with the three story brick building thereon; part of the first and the whole of the 2d story of which has been rented by the assignee till the 31 day of October next, at the rate of six hundred and sixty dollars per annum; adjudicated to Wm. Houston for six thousand three hundred dollars.

7th. Lot No. 7 has the same front and width as the aforementioned lot, by a depth of 58 feet 10 inches on the line separating it from lot No. 6, and of 58 [feet] 8½ inches on the line separating it from lot No. 8, together with the three story brick building thereon; the 1st and 2nd stories of which have been leased by the assignee till the 31st day of October next, at the rate of $1,360 per annum; adjudicated to J. G. Bernard for six thousand six hundred dollars.

8th. Lot No. 8 has the same front and width of the aforementioned lot, by a depth of 58 feet 8½ inches on the line separating it from lot No. 7, and of 58 feet 7 inches on the line separating it from lot No. 9, together with the three story brick store thereon; adjudicated to J. A. Caillaret for six thousand one hundred dollars.

9th. Lot No. 9 has the same front and width as the aforementioned lot, by a depth of 58 feet 7 inches on the line separating it from lot No. 8, and of 58 feet 5½ inches on the line separating it from lot No. 10, together with the three story brick store thereon; the first and second stories of which have been leased by the assignee till the 31st day of October next, at the rate of $1,200 per annum; the third story of the four last mentioned stores have been leased by the assignee till the 25th day of April next, up to which time no rent will be received by the purchaser; adjudicated to Xavier Lambert for six thousand and fifty dollars.

10. Lot No. 10 forms the corner of Magazine and Natchez streets, and has a front of 26 feet 10⅝ inches on Magazine street, by a depth and front of 58 feet 4 inches on Natchez street, 58 feet 5½ inches on the line separating it from lot No. 9, and 23 feet 11½ inches in width in the rear, together with the three story brick store thereon; the whole of which has been leased by the bankrupt, the first story till the 31st day of October next, and the others till the 25th day of April next, up to which date no rent will be received by the purchaser; adjudicated to J. D. Weaver for nine thousand dollars.

All the aforementioned lots extend from Magazine street to the Arcade passage, and have a front on said passage, which is about 20 feet in width, and extends from Gravier street to Natchez street, and the use of which is common to them all.

11. Lot No. 11 has a front of 23 feet on Gravier street, by a depth and front on the Arcade passage of 84 feet 5 inches, 81 feet 11½ inches on the line separating it from lot No. 12, and 16 feet 6 inches in the rear, together with the three story brick stores thereon, which has been leased by the assignee till the 31st day of October next, at the rate of $1,650 per annum; adjudicated to John Freeland for eight thousand one hundred dollars.

12. Lot No. 12 has a front of 23 feet 6½ inches on Gravier street, by a depth of 81 feet 11½ inches on the line separating it from lot No. 11, and of 79 feet 6 inches on the opposite side line, and 16 feet 9 inches

in width in the rear, together with the three story brick store thereon; adjudicated to J. Fowler, jr., for J. G. Blanchard, for six thousand and fifty dollars.

The party wall between Nos. 11 and 12 extends only about two-thirds of the whole distance.

13. Lot No. 13 has a front on the Arcade passage of 25 feet, by a depth of 82 feet on the line separating it from lot No. 14, and 82 feet 1 inch and 7 lines on the opposite side line, and 25 feet in width in the rear, together with the three story brick building thereon; the lower story of which has been leased by the assignee till the 31st day of October next, at the rate of $400 per annum; the third story has been leased by the bankrupt till the 25th day of April next, up to which time no rent of that store will be received by the purchaser; adjudicated to P. N. Wood for F. M. Fisk, two thousand five hundred dollars.

14. Lot No. 14 has a front on the Arcade passage of 24 feet 1 inch, by a depth of 82 feet on the line separating it from lot No. 13, and of 81 feet 10 inches and 3 lines on the line separating it from lot No. 15, and 24 feet in width in the rear, together with the three story brick building thereon: the second and third stories of which have been leased by the bankrupt till the 25th day of April next, up to which time no rent will be received by the purchaser; the lower part of the premises is leased by the assignee to J. B. Marks, to 1st Nov. next, at $25 per month; purchaser is to receive rent from 1st November next; adjudicated to F. M. Fisk for two thousand five hundred and fifty dollars.

15. Lot No. 15 has a front of 29 feet on the Arcade passage, by a depth of 81 feet 10 inches and 3 lines on the line separating it from lot No. 14, and of 81 feet 8 inches and 6 lines on the line separating it from lot No. 16, and 29 feet in width in the rear, together with the three story brick building thereon, which has been leased by the bankrupt till the 25th day of April next, up to which date no rent will be received by the purchaser; between the two last mentioned stores is a passage of 3 feet 9 inches in width, extending from the Arcade passage to the yard in the rear, and is included in the width of lot No. 15; adjudicated to Wm. Houston for three thousand and fifty dollars.

16. Lot No. 16 has a front of 25 feet 8½ inches on the Arcade passage, by a depth of 81 feet 8 inches and 6 lines on the line separating it from lot No. 15, and of 81 feet 6 inches and 9 lines on the line separating it from lot No. 17, and 29 feet 7 inches in width in the rear, together with the three story brick building thereon, which has been leased by the bankrupt till the 25th day of April next, up to which time no rent will be received by the purchaser; adjudicated to Wm. Houston for two thousand three hundred dollars.

17. Lot No. 17 has a front of 24 feet 4½ inches on the Arcade passage, by a depth of 81 feet 6 inches and 9 lines on the line separating it from lot No. 16, and 81 feet 5 inches and 2 lines on the opposite side line, and 24 feet 3 inches and 7 lines in width in the rear, together with the three story brick building thereon, which has been leased by the bankrupt till the 25th day of April next, up to which date no rent

will be received by the purchaser. In the rear of all the five last described lots is a yard about 25 feet in width, which is included in the depth of said lot; adjudicated to Wm. Houston for two thousand two hundred and fifty dollars.

18. Lot No. 18 has a front of 24 feet 1 inch on Natchez street, by a depth and front on the Arcade passage of 63 feet 4 inches and 5 lines, 61 feet 10 inches and 7 lines on the line separating it from lot No. 19, and twenty-five feet five inches in width in the rear, together with the three story brick building thereon; part of the first story of which, fronting on Natchez street, is rented by the assignee at $22 per month, and the other part fronting on the passage, with the 2nd and 3d stories, have been leased by the bankrupt till the 31st day of October next, and the other till the 25th day of April next, up to which dates no rents for these parts will be received by the purchaser; adjudicated to F. M. Fisk, for three thousand three hundred dollars.

All the aforementioned lots, except lot No. 12, front on the Arcade passage, which is about 20 feet in width, and extends from Gravier street to Natchez street, and the use of which is common to them all.

19th. Lot No. 19 has a front of 22 feet 7 inches on Natchez street, by a depth of 61 feet 10 inches and 7 lines on the line separating it from lot No. 18, and 60 feet 5 inches and 2 lines on the line separating it from lot No. 20, and twenty-four feet 11 inches in width in the rear, together with the three story brick store and dwelling thereon, which has been leased by the assignee till the 31st day of October next, at the rate of $716 per annum; adjudicated to Thomas M. Doyle for three thousand five hundred dollars.

20th. Lot No. 20 has a front of 22 feet 10½ inches on Natchez street, by a depth of 60 feet 5 inches and 2 lines on the line separating it from lot No. 19, and of 58 feet 11 inches and 7 lines on the line separating it from lot No. 21, and 24 feet 11 inches in width in the rear, together with the three story brick store and dwelling thereon; the second and third stories of which have been leased by the assignee till the 31st day of October next, at the rate of $420 per annum; the 1st story is rented by the month at $18; adjudicated to F. M. Hatch for three thousand three hundred dollars.

21st. Lot No. 21 has a front of 24 feet 8½ inches on Natchez street, by a depth of 58 feet 11 inches and 7 lines on the line separating it from lot No. 20, and of 57 feet 6 inches and 2 lines on the opposite side line, and 25 feet five inches in width in the rear, together with the three story brick store and dwelling thereon; adjudicated to Jos. B. Marks, for F. M. Fisk, for three thousand three hundred and fifty dollars.

Terms. One-third of the purchase money payable cash, the balance in equal instalments at 6, 12, 18, 24, and 30 months credit, from day of sale, for which each purchaser will furnish his notes, payable to his own order, secured by mortgage on the property, and to bear ten per cent. per annum interest from maturity, if not punctually paid, until paid.

I certify that the foregoing is an extract from the original process

verbal of A. S. Robertson, United States marshal for the eastern district of Louisiana, in relation to the sale adjudicated by the said marshal, on the 15th day of February, 1843, in the bankruptcy of Thomas Banks, which process verbal is annexed to an act passed before me on the 17th of June, 1843.

In faith whereof, I grant these present, under my signature and seal of office, this ninth day of April, 1844.

(Signed) JOS. B. MARKS, [SEAL.]
*Notary public.*

Doct. C. Notarial copy filed with answer of Houston and als., September 3d, 1844, filed 24th April, 1845, in evidence.

STATE OF LOUISIANA, *City of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses.

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court, for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of Thomas Banks, to be declared a bankrupt, No. 353.

The petition and proof having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court, for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *Deputy clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared that pursuant to, and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy of which is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the 25th February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors, at which public sale the hereinafter described property was adjudicated to William Houston, of London, England, for the price and sum of seven thousand six hundred dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

Three certain lots of ground, together with all the buildings and improvements thereon, rights, ways, privileges and advantages thereunto belonging, or in any wise appertaining, (making part of the building known by the name of Banks' arcade) situated in Municipality No. 2, of this city, and fronting on the Arcade passage, between Gravier and Natchez streets, designated by the numbers fifteen, sixteen, and seventeen, of a plan drawn by James H. Dakin, on the fifth of January last, and deposited as plan number forty-eight, in the book of plans of the undersigned notary. Lot number fifteen measures twenty-nine feet front on said Arcade passage; eighty-one feet ten inches and three lines in depth on the side adjoining lot number fourteen on said plan; eighty-one feet eight inches and six lines in depth on the side adjoining lot number sixteen on said plan, and twenty-nine feet width in the rear. Lot number sixteen measures twenty-five feet eight inches and one-half front on said Arcade passage; eighty-one feet eight inches and six lines in depth on the side adjoining said lot number fifteen; eighty-one feet six inches and nine lines in depth on the side adjoining said lot number seventeen, and twenty-five feet seven inches width in the rear. And said lot number seventeen measures twenty-four feet four inches and one-half front on said Arcade passage; eighty-one feet six inches and nine lines in depth on the side adjoining lot number sixteen; eighty-one feet five inches and two lines in depth on the side nearest Natchez street, and twenty-four feet three inches and seven lines width in the rear; the whole English measure.

There is a passage between lots fourteen and fifteen, measuring three feet nine inches in width, which alley is included in the width of lot number fifteen, hereinbefore described; and the Arcade passage is to be kept open and to be used by all the proprietors of property fronting thereon; which lots make part of lots numbers three and four, as per plan drawn by Joseph Pilie, city surveyor, dated 20th May, 1830, and annexed to an act of sale passed before Octave de Armas, notary pub-

lic in this city, on the 14th February, 1831, acquired by said Thomas Banks from Louis G. Hillesberg, by act before G. R. Stringer, late notary public in this city, 8th February, 1833. The property herein conveyed has been leased by the bankrupt to John Hewlett, to the 25th April last, up to which time no rent will be received by the purchaser.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office, on this date, it appears that said property is free from encumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver unto the said William Houston, herein represented by Peter Maxwell of this city, by virtue of a power of attorney passed before D. L. McCay, notary public in this city, on the 17th day of February, 1843, present, and accepting for his said principal, his heirs and assigns, and acknowledging due delivery and possession, the property hereinafter described, together with all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining. To have and to hold the said property, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property, &c.; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents, hereby transferring to said purchaser all rights of warranty existing on the said Banks against his or their creditors.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of seven thousand six hundred dollars, in part payment and deduction of which said purchaser, through his attorney aforesaid, has paid the sum of two thousand five hundred and thirty-three dollars thirty-five cents, in ready money; and in payment of the balance of said price, to wit, the sum of five thousand and sixty-six dollars sixty-five cents, the said attorney has furnished five several promissory notes of his principal to his own order, and by him endorsed, for the sum of one thousand and thirteen dollars thirty-three cents each, dated the said fifteenth day of February last, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date, at the Bank of Louisiana; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due. Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowleges the receipt hereof. And in order to secure the payment of said five promissory notes, with

such interest as may accrue thereon; the said purchaser (through his attorney aforesaid,) doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, hereby binding his said principal not to sell, alienate, deteriorate, or encumber the said property to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed: P. pro. WM. HOUSTON,
PETER MAXWELL,
F. B. CONRAD,
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy from the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, this twenty-seventh day of April, 1844.

(Signed) JOS. B. MARKS, [SEAL.]
*Notary public.*

Doct. D. (Notarial copy of sale) filed with answer of Houston and others, 3d September, 1844; filed in evidence April 24th, 1845.

STATE OF LOUISIANA, *City of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses.

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt, No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress

entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *Deputy clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to, and by virtue of, *of* another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, bearing date the 25th February, 1843, and of record in the office of the undersigned notary, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Jonathan Gross Barnard, of this city, for the price and sum of six thousand six hundred dollars, payable one-third in cash, the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear ten per cent. per annum interest from maturity, if not then paid, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in Municipality No. two, of this city, in the square bounded by Magazine, Natchez, Tchapitoulas and Gravier streets, designated by the number seven, on a plan drawn by James H. Dakin, on the fifth day of January last, and deposited as plan No. forty-eight, in the book of plans of the undersigned notary; said lot measures in English measure twenty-three feet eight inches front on Magazine street; fifty-eight feet eight and one-half inches in depth on the side adjoining lot number eight on said plan; fifty-eight feet ten inches in depth on the side adjoining lot number six on said

plan, and twenty-two feet nine and one-third inches width in the rear and front, on the Arcade passage, which passage is in common to all the lots fronting thereon.

The property herein conveyed makes part of lot number four, as per plan drawn by Joseph Pilié, city surveyor, dated 20th May, 1830, and annexed to an act passed before Octave de Armas, notary public in this city, on the 14th February, 1831, acquired by said Thomas Banks (with another lot,) from Louis G. Hillesberg, by an act passed before G. R. Stringer, late notary public in this city.

By reference to the certificate of the recorder of mortgages for this city and parish, dated *dated* this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that the property herein conveyed is free from incumbrance.

The lower story of said premises has been leased by said assignee to E. E. Aaron, to 31st October next, at the rate of $1,000 per annum, by an act passed before me, notary, on the 25th October, 1842, for which monthly notes were given; the second story has been leased by the assignee to Newton, Whitaker & Co., by act passed before me, notary, on the 7th of December, 1842, at the rate of three hundred and sixty dollars per annum, for which monthly notes were given by the tenants; and the third story of said premises has been leased by the bankrupt to J. Hewlett, 25th April, 1843, up to which time no rent will be received by the purchaser. The notes of Aaron and Newton, Whitaker & Co., for rent from 1st April last, are now delivered to said purchaser, who hereby acknowledges the receipt thereof; and the assignee hereby transfers to said purchaser all his rights against said tenant by the acts of lease above referred to.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee, as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver unto the said J. G. Bernard, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the lot of ground, with the buildings thereon, rights, ways, privileges, &c., thereunto belonging, as herein before described. To have and to hold the said lot of ground, buildings, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these premises.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of six thousand six hundred dollars, in part payment and deduction of which said purchaser has paid the sum of two thousand two hundred dollars in ready money; and in payment of the balance of said price, to wit, the sum of four thousand four hundred dollars, the said purchaser has furnished his five several promissory

notes, for the sum of eight hundred and eighty dollars each, to his own order, and by himself endorsed, dated the said 15th day of February, 1843, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were, with said ready money, delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser does hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, promising and binding himself not to sell, alienate, deteriorate, or incumber the said property to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed :

J. G. BERNARD,
F. B. CONRAD,
D. J. RICARDO,
THEO. COMMAGERE.
JOS. B. MARKS,
*Notary Public.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office at New Orleans, this 14th day of June, 1843.

[SEAL.] JOS. B. MARKS, *Not. Pub.*

$880. NEW ORLEANS, *15th February*, 1843.

Six months after date I promise to pay, to the order of myself, eight hundred and eighty dollars for value received, with interest thereon from maturity until paid, at the rate of ten per centum per annum.

(Signed) J. G. BARNARD, erased.
Endorsed, J. G. BARNARD.
Received payment, N. N. WILKINSON,
*Cashier.*

Paid. Paid. W. A. BARTLETT.
Ne varietur. New Orleans, 7th June, 1843.
JOS. B. MARKS, *Not. Pub.*

$880. NEW ORLEANS, *15th February*, 1843.

Twelve months after date I promise to pay, to the order of myself, eight hundred and eighty dollars, value received, with interest thereon from maturity until paid, at the rate of ten per cent. per annum.

(Signed) J. G. BARNARD, erased.
Endorsed, J. G. BARNARD,
Received payment, N. N. WILKINSON,
*Cashier Canal Bank.*

Ne varietur. New Orleans, 7th June, 1843.
JOS. B. MARKS, *Not. Pub.*

Doc. E.

(*Notarial copy of sale*) *filed with answer of Houston and others, 3d September*, 1844. *Filed in evidence, 24th April*, 1845.

STATE OF LOUISIANA, *City of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

It is further ordered, that T. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the

eastern district of Louisiana, do certify that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

(Signed) N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *D'y clerk*
*of the United States district court, eastern districtof Louisiana.*

Which said appearer declared, that pursuant to and by virtue of an order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the 25th of February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction on the 15th day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors, at which public sale the hereinafter described property was adjudicated to Thomas Murry Doyle, of this city, for the price and sum of three thousand five hundred dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, situated in Municipality No. two, of this city, in the square bounded by Gravier, Tchapitoulas, Natchez, and Magazine streets, designated by the number NINETEEN, on a plan drawn by James H. Dakin, dated fifth January last, and deposited as plan No. forty-eight, in the book of plans of the undersigned notary; said lot measures in English measure twenty-two feet seven inches front on Natchez street, sixty-one feet ten inches and seven lines in depth on the side adjoining lot No. eighteen in said plan, sixty feet five inches and ten lines in depth on the side adjoining lot No. twenty on said plan, and twenty-four feet eleven inches width in the rear.

Which lot makes part of lots No. sixteen and twenty-four, on a plan drawn by Joseph Pilié, on the 26th of January, 1828, and annexed to an act passed before G. R. Stringer, a notary public in this city, dated 26th of December, 1828, acquired by said Thomas Banks (with other lots) from M. Morgan, by an act passed before L. T. Caire, a notary public in this city, on the twenty-sixth of May, 1831. And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that the property herein conveyed is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bar-

gain, convey, transfer, assign, set over, and deliver, unto the said Thomas Murry Doyle, here present and accepting for himself and his heirs and assigns, and acknowledging due delivery and possession of the property herein before described. To have and to hold the said property unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property. The said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of three thousand five hundred dollars, in part payment and deduction of which said purchaser has paid the sum of one thousand one hundred and sixty-six dollars and sixty-six cents in ready money; and in payment and liquidation of the balance of said price, to wit, the sum of two thousand three hundred and thirty-three dollars thirty-four cents, the said purchaser has furnished his five several promissory notes, for the sum of four hundred and sixty-six dollars sixty-seven cents each, drawn to his own order, and by himself endorsed, dated the said 15th day of February, 1843, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payment beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said appearers, and me, the said notary.

Original signed,

THOS. M. DOYLE,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this tenth of June, 1843.
[SEAL.] (Signed) JOS. B. MARKS, *Not. Pub.*

Document F, (notarial copy of sale,) filed with answer of Houston and others, 3d September, 1844. Filed in evidence, April 24th, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses.

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said

CLERK'S OFFICE, *September 5th*, 1844.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Dy. clerk*,
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the sixth day of January, 1843, a certified copy whereof is annexed to an unfinished act from said as-

signee to Mark Davis, on file in this office, under date of the 25th February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to William Houston of London, England, for the price and sum of six thousand three hundred dollars, payable one third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum until final payment, he being the last and highest bidder for said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, (making part of the building known by the name of Banks' arcade,) situated in Municipality No. 2 of this city, in square bounded by Magazine, Natchez, Tchapitoulas, and Gravier streets, designated by the number SIX on a plan drawn by James H. Dakin on the 5th of January last, and deposited as plan No. forty-eight, in the book of plans of the undersigned notary; said lot measures in English measure twenty-three feet eight inches front on said Magazine street, fifty-eight feet eleven and a half inches in depth on the side adjoining lot No. five on said plan, fifty-eight feet ten inches in depth on the side adjoining lot No. seven on said plan, and twenty-two feet nine and three quarter inches width in the rear and front on the Arcade passage, which passage is in common to all the lots fronting thereon.

The property herein conveyed makes part of lot No. four, as per plan drawn by Joseph Pilié, city surveyor, dated 20th May, 1830, annexed to an act passed before Octave de Armas, notary public in this city, on the 14th February, 1831, acquired by said Thomas Banks (with another lot) from Louis G. Hillesberg, by an act passed before G. R. Stringer, late notary public in this city, on the eighth of February, 1833.

By reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that the property herein conveyed is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis B. Conrad, acting in his capacity of assignee as above set forth, does, by these presents, sell, bargain, convey, transfer, assign, set over, and deliver unto the said William Houston, herein represented by Peter Maxwell of this city, by virtue of a power of attorney, passed before D. L. McCay, notary, in this city, seventeenth of February, 1843, present and accepting for his said principal, and his heirs and assigns, and acknowledging due delivery and possession, the property hereinbefore described, with all the rights, ways, privileges, and advantages thereunto belonging, or in any wise apper-

taining; to have and to hold the said property, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof, forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property, &c.; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents; hereby transferring to said purchaser all rights of warranty existing in the said Banks against his or their vendors.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of six thousand three hundred dollars, in part payment and deduction of which said purchaser (thro' his attorney aforesaid) has paid the sum of two thousand one hundred dollars in ready money; and in payment of the balance of said price, to wit, the sum of four thousand two hundred dollars, the said attorney has furnished five several promissory notes of his said principal to his own order, and by him endorsed, for the sum of eight hundred and forty dollars each, dated the said fifteenth day of February last, and payable, respectively, at six, twelve, eighteen, twenty-four, and thirty months after date, at the Bank of Louisiana; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser (through his attorney aforesaid) doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or the last holder or holders of said notes, hereby binding his said principal not to sell, alienate, deteriorate, or encumber the said property to the prejudice of this mortgage.

Done and passed in my office, at the city of New Orleans aforesaid, this seventh day of June, in the year eighteen hundred and forty-three, in presence of Daniel J. Ricardo, and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed, Pr. pro WM. HOUSTON,
PETER MAXWELL,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy from the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, this twenty-seventh day of April, 1844.

[SEAL.] (Signed) JOS. B. MARKS, *Not. Pub.*

*Document G.*

(Notarial copy of sale,) filed with answer of Houston and others, 3rd September, 1844. Filed in evidence 24th April, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *D'y clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared that, pursuant to and by virtue of an order of said court, dated the 6th day of January, 184–, a certified copy

whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the 25th of February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to William Houston, of London, England, for the price and sum of twenty-five thousand one hundred and fifty dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months' credit, for notes secured by mortgage on the property, and to bear interest from maturity, if not then paid, at the rate of ten per cent. per annum until final payment; he being the last and highest bidder of the said property, which is of the description following, to wit:

Two certain lots of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, (making part of the building known by the name of Banks' arcade,) situated in Municipality No. two, of this city, in the square bounded by Magazine, Natchez, Tchapitoulas, and Gravier streets, designated by the numbers four and five, on a plan drawn by James H. Dakin, on the fifth of January last, and deposited as plan No. forty-eight in the book of plans of the undersigned notary; said lot No. four measures in English measure twenty-three feet — inches front on said Magazine street, fifty-nine feet five and a half inches in depth on the side adjoining lot No. three on said plan, fifty-nine feet four inches in depth on the side adjoining said lot No. five, and twenty-two feet nine inches and three quarters width in the rear and front on the Arcade passage. And said lot No. five measures in English measure seventy-one feet front on said Magazine street, fifty-nine feet four inches in depth on the side adjoining lot No. four, fifty-eight feet eleven and one-half inches in depth on the side adjoining lot No. six on said plan, and sixty-eight feet four inches width in the rear and front on the Arcade passage; which passage is in common to all the lots fronting thereon.

Lot No. four was acquired by said Banks from Mrs. Catherine Wray, (with a large portion of ground,) by act passed before William Christy, notary public in this city, on the first day of March, 1833, and the remainder of said lot, (No. four,) and the whole of lot No. five, acquired by said Banks (with a larger portion of ground,) from Louis G. Hillesberg, by act passed before G. R. Stringer, late notary public in this city, on the eighth of February, 1833. At the time said Banks acquired the portion of ground from Mrs. Wray, it had no number, and at the time he acquired the portion of ground from S. G. Hillesberg, it was divided into two lots, and designated by the numbers three and four, on a plan drawn by Joseph Pilié, city surveyor, dated 20th May, 1830, and annexed to an act of sale passed before Octave de Armas, notary public in this city, on the 14th February, 1831.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis B. Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver unto the said William Houston, herein represented by Peter Maxwell, of this city, by virtue of a power of attorney passed 17th of February, 1843, before D. L. McCay, notary in this city, present and accepting for his said principal, his heirs and assigns, and acknowledging due delivery and possession, the property herein before described, with all the rights, ways, privileges, and advantages thereunto belonging. To have and to hold the said property, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property, the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent by virtue of these presents, hereby transferring to said purchaser all rights of warranty existing in said Banks against his or their vendor.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of twenty-five thousand one hundred and fifty dollars, in part payment and deduction of which the said purchaser, through his attorney aforesaid, has paid the sum of eight thousand three hundred and eighty-three dollars thirty-four cents in ready money; and in payment of the balance of said price, to wit, the sum of sixteen thousand seven hundred and sixty-six dollars sixty-six cents, the said attorney has furnished five several promissory notes of his said principal for the sum of three thousand three hundred and fifty-three dollars thirty-three cents and one-fifth of a cent each, to his own order and by him endorsed, dated the said fifteenth day of February last, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date, at the Bank of Louisiana; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due; which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were, with said ready money, delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser (through his attorney aforesaid,) doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, hereby binding his said principal not to sell, alienate, deteriorate, or incumber the said property to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed, Pr. pro WM. HOUSTON,
PETER MAXWELL,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, this 27th day of April, 1844.

(Signed) JOS. B. MARKS, *Not. pub.*

*Document H.*

Notarial copy of sale filed with answer of Houston and others, 3d Sept'r, 1844. Filed in evidence 24th April, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
*Eastern district of Louisiana:*

Sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of petition of Thomas Banks, to be declared bankrupt, No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is, hereby appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient trustees, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings. N. R. JENNINGS, *Clerk*,

By ED. LAUVE, *Dy. clerk*

*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to the present purchaser on file in this office, under date of the 25th of February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction on the 15th day of February, 1843, at Bank's arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Mark Davis, of this city, for the price and sum of five thousand nine hundred dollars, payable one third in cash and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear ten per cent. per annum interest from maturity, if not then paid, until final payment; he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in anywise appertaining, situated in Municipality No. two of this city, in the square bounded by Magazine, Natchez, Tchapitoulas, and Gravier streets, designated by the No. two on a plan drawn by James H. Dakin on the fifth day of January last, and deposited as plan forty-eight in the book of plans of the undersigned notary; said lot measures in English measure twenty-three feet eight inches front on said Magazine street, fifty-nine feet eight and one quarter inches in depth on the side adjoining lot No. one on said plan, fifty nine feet seven inches in depth on the side adjoining lot No. three on said plan, and twenty-three feet five and one half inches width in the rear and front on the Arcade passage, which passage is in common to all the lots fronting thereon.

Which lot makes part of a larger portion of ground acquired by said Thomas Banks from Mrs. Catherine Wray, by an act passed before William Christy, a notary public in this city, on the first day of March, 1833.

By reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears that the said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver unto the said Mark Davis, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the lot of ground with the buildings thereon, rights, ways, privileges, &c., thereunto belonging, as hereinafter described; to have and to hold the said lot of ground, buildings, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the abovementioned adjudication, is made and accepted for and in consideration of the price and sum of six thousand nine hundred dollars, in part payment and deduction of which said purchaser has paid the sum of two thousand three hundred dollars in ready money; and in payment of the balance of said price, to wit, the sum of four thousand six hundred dollars, the purchaser has furnished his five several promissory notes for the sum of nine hundred and twenty dollars each, to his own order and by himself endorsed, dated the fifteenth day of February, (1843,) and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and especially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber the said property to the prejudice of this mortgage.

Done and passed in my office in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed,

MARK DAVIS,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy from the original act extant in my current register; in faith whereof I grant these presents, under my signature and seal of office, this seventh day of May, 1844.

[SEAL.] (Signed,) JOS. B. MARKS, *Not. pub.*

*Document I.*

Notarial copy of sale filed with answer of Houston and others, 3d September, 1844. Filed in evidence April 24th, 1845.

STATE OF LOUISIANA,
*City of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared bankrupt, No. 253.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with to sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th,* 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk,*
By ED. LAUVE, *Dy. clerk*
*of the United States district court, eastern district of Louisiana.*

[REC. , D. T. 1847.]—8

Which said appearer declared that, pursuant to and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to the present purchaser on file in this office, under date of the 25th February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, 1843, at Bank's arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors, at which public sale the hereinafter described was adjudicated to Mark Davis for the price and sum of six thousand four hundred dollars, payable one third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear ten per cent. per annum interest from maturity, if not then paid, until final payment; he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in anywise appertaining, (making part of Banks' arcade,) situated in Municipality No. two, of this city, in the square bounded by Magazine, Natchez, Tchapitoulas, and Gravier streets, designated by the number three, on a plan drawn by James H. Dakin, on the fifth of January last, and deposited as plan number forty-eight in the book of plans of the undersigned notary; said lot measures in English measure twenty-three feet eight inches front on said Magazine street; fifty-nine feet seven inches in depth on the side adjoining lot number two on said plan; fifty-nine feet five and one-half inches in depth on the side adjoining lot number four on said plan, and twenty-two feet nine and three-quarters inches width in the rear and front on the Arcade passage, which passage is common to all the lots fronting thereon.

Which lot was acquired by the said Banks, partly from Mrs. Catharine Wray, with a larger portion of ground, by an act passed before Wm. Christy, a notary public in this city, on the first day of March, 1833, and partly from L. G. Hillesberg, with a larger portion of ground, by act passed before G. R. Stringer, notary in this city, on the 8th day of February, 1833. And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to the present purchaser, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver unto the said Mark Davis, here present and accepting for himself, heirs, and assigns, and acknowledging due delivery and possession, the property, with all the rights and privileges thereunto as hereinafter set forth. To have and to hold the said property, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby

vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property, &c. The said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent by virtue of these presents.

The present sale, pursuant to the terms and conditions of the above-mentioned adjudication, is made and accepted for and in consideration of the price and sum of six thousand four hundred dollars, in part payment and deduction of which said purchaser has paid the sum of two thousand one hundred and thirty-three dollars thirty-three cents in ready money; and in payment of the balance of said price, to wit, the sum of four thousand two hundred and sixty-six dollars sixty-seven cents, the said purchaser has furnished his five several promissory notes, for the sum of eight hundred and fifty-three dollars thirty-three and two-tenths cents each, to his own order, and by himself endorsed, dated the said fifteenth day of February, 1843, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed, in favor of said assignee, or of the last holder or holders of said notes, promising and binding himself not to sell, alienate, deteriorate, or incumber said property to the prejudice of this mortgage. Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, said notary.

Original signed,

MARK DAVIS,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy from the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office, this 7th day of May, 1844.

(Signed) JOS. B. MARKS, [SEAL.]
*Notary public.*

*Document 1.*

Notarial copy of sale filed with answer of J. D. Weaver, 16th May, 1844. Filed in evidence 24th April, 1845.

STATE OF LOUISIANA, *City of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said B. F. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court. And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *Deputy clerk of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the 6th day of January, 1842, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the twenty-fifth of February, 1843, the United States marshal for the eastern district of

Louisiana, after the advertisements required by law had been made, exposed for sale, at public auction, on the fifteenth day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property, surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Joseph Danford Weaver of this city, for the price and sum of nine thousand dollars, payable one-third in cash, the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months' credit, for notes secured by mortgage on the property, and to bear ten per cent. per annum interest from maturity, if not then paid, until final payment; he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, (making part of the building known as Banks' arcade,) situate in Municipality number two, of this city, at the corner of Magazine and Natchez streets, designated by the number ten, on a plan drawn by James H. Dakin, on the fifteenth day of January last, and deposited as plan number forty-eight in the book of plans of the undersigned notary. Said lot measures in English measure twenty-four feet ten inches and five-eighths of an inch front on Magazine street; fifty-six feet four inches in depth and front on Natchez street; fifty-eight feet five inches and one-half of an inch in depth on the side adjoining lot number nine on said plan; and twenty-three feet eleven inches and one-half of one inch width in the rear and front on the Arcade passage, which passage is in common to all the lots fronting thereon.

Which said lot makes part of lots Nos. eighteen and nineteen, on a plan drawn by Joseph Pilié, on the twenty-sixth of January, 1828, and annexed to an act passed before G. R. Stringer, a notary public in this city, dated twenty-sixth of December, 1828, acquired by said Thomas Banks (with other lots) from M. Morgan, by an act passed before Louis T. Caire, a notary public in this city, on the twenty-sixth of May, 1831; the second and third stories of said premises have been leased by the bankrupt until the twenty-fifth day of April last, and the first story has been leased by the bankrupt to Michael Kling, until the thirty-first day of October next, up to which dates no rents will be received by the purchaser.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that the property herein conveyed is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Joseph Danforth Weaver, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the

lot of ground with the buildings thereon, rights, ways, privileges, &c., thereunto belonging, as herein before described.

To have and to hold the said lot of ground, buildings, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of nine thousand dollars, in part payment and deduction of which the said purchaser has paid the sum of three thousand dollars in ready money; and in payment of the balance of said price, to wit, the sum of six thousand dollars, the said purchaser has furnished his five several promissory notes for the sum of twelve hundred dollars each, to his own order, and by himself endorsed, dated the fifteenth day of February, 1843, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes, if not punctually paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, promising and binding himself not to sell, alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

Done and passed in my office, at the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said appearers, and me, said notary.

Original signed, F. B. CONRAD, *Assignee*,
J. D. WEAVER,
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this 10th day of June, 1843.

[SEAL.] (Signed,) JOS. B. MARKS, *Not. Pub.*

Doc. K.

*Notarial copy of sale, filed with answer of X. Lambert, May 6th, 1844. Filed in evidence, April 24th, 1845.*

STATE OF LOUISIANA, *City of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana. Sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. [R.] Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above order and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *D'y clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, the United States mar-

shal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Xavier Lambert, of this city, for the price and sum of six thousand and fifty dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage upon the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum, until final payment; he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, making part of the property known by the name of "Banks' arcade," situated in Municipality No. two, of this city, in the square bounded by Magazine, Natchez, Tchapitoulas, and Gravier streets, designated by the number *nine*, on a plan drawn by James H. Dakin, on the fifth day of January last, and deposited as plan No. forty-eight in the book of plans of the undersigned notary; said lot measures in English measure twenty-three feet eight inches front on said Magazine street, fifty-eight feet seven inches in depth on the side adjoining lot No. eight on said plan, fifty-eight feet five and one half inches in depth on the side adjoining lot No. ten on said plan, and twenty-two feet nine and three quarters inches width in the rear and front on the Arcade passage, in common to all the lots fronting thereon.

Which lot makes part of lots Nos. seventeen and eighteen, as per plan drawn by Joseph Pilié, surveyor, dated 26th January, 1828, annexed to an act passed before G. R. Stringer, late notary public in this city, on the 26th December, 1828, acquired by Thomas Banks with other lots from M. Morgan, by an act passed before Louis T. Caire, notary public in this city, on the twenty-sixth day of May, eighteeen hundred and thirty-one.

The first and second stories of said premises have been leased by said assignee to the present purchaser until the 31st day of October next, at the rate of twelve hundred dollars per annum, and for which monthly notes were given; which notes for the rent, from the first of April next to the 21st October next, are now returned to said purchaser, who hereby acknowledges the receipt thereof. And the third story of said premises have been leased by the bankrupt to J. Hewlett, until the twenty-fifth day of April next, up to which time no rent will be received by the purchaser.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis B. Conrad, acting in his capacity of assignee, as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Xavier Lambert, here present, and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the property and appurtenances herein before described. To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property and appurtenances; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of six thousand and fifty dollars, in part payment and deduction of which said purchaser has paid the sum of two thousand and sixteen dollars sixty-five cents in ready money; and in payment of the balance of said price, to wit, the sum of four thousand and thirty-three dollars thirty-five cents, the said purchaser has furnished his five several promissory notes for the sum of eight hundred and six dollars sixty-seven cents, to his own order, and by himself endorsed, dated the said fifteenth day of February last, and payable respectively at six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser does hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber said property to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this twenty-fifth day of February, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses duly qualified, who hereunto sign their names with said parties, and me, the said notary

Original signed,

X. LAMBERT,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this sixteenth day of March, 1843.

[SEAL.] (Signed,) JOS. B. MARKS, *Not. Pub.*

Doc. L.

*Transcript from the parish court. Filed 24th April,* 1845.

STATE OF LOUISIANA,

*Parish court, in and for the parish and city of New Orleans.*

No. 15,629. F. B. Conrad, assignee of the estate of Thomas Banks, praying a mandamus.

Service of petition accepted.

(Signed,) C. ROSELIUS,
*for the Recorder of Mortgages.*

*Petition. Filed March 6th,* 1843.

To the honorable the judge of the parish court, in and for the parish and city of New Orleans.

The petition of F. B. Conrad, assignee of the estate of Thomas Banks, humbly shews: That the said Thomas Banks was duly decreed to be a bankrupt by the district court of the United States for the eastern district of Louisiana, sitting in bankruptcy, and that this petitioner was duly appointed his assignee; that amongst the property surrendered by said bankrupt were valuable tracts of real estate, which had been mortgaged by him, and which were by him placed in possession of petitioner in his said capacity as assignee. That the mortgagees, who were entitled to the first mortgages on said property, did request of petitioner to obtain an order of said district court for the sale of said mortgaged property, and did consent that said sale should be effected for the purpose of paying their claims; that petitioner did thereupon apply to the said honorable court, sitting in bankruptcy, for an order authorizing the sale of said mortgaged property, and in order to effect the sale, did also pray for a judgment directing the erasure of the mortgages recorded against said property. That all the mortgagees, holding liens upon said property, were thereupon cited by said honorable court to oppose the prayer of petition, if any cause they could shew; that upon said citation judgment supervened, decreeing the erasure of said mortgages, the sale of property by the marshal of the United States for the eastern district of Louisiana, and the reservation to all parties interested of their respective rights on the proceeds of the sale when effected; that said property was sold by said marshal, in execution of the said decree of said court. That thereupon petitioner obtained a copy of said judgment, and did tender it to the recorder of mortgages for this parish, and did require of him to erase the mortgages according to the tenor of said judgment, and to give petitioner a certificate, shewing said property to be free from said incumbrances; and did, at the same time, tender to said recorder the fees of office, to him by law allowed for the service claimed of him, to the end that

petitioner might be enabled to pass unincumbered titles to the purchasers of said property; but the said recorder, the said mortgages to erase, and the said certificate to grant, did refuse, alleging that the judgment aforesaid was invalid, and of no legal force or effect. Petitioner annexes hereto a copy of said judgment for further detail.

Wherefore, and inasmuch as Denis Prieur, recorder of mortgages for the parish of Orleans, refuses as aforesaid to render the services which he is bound by his office to render, petitioner prays your honor that he be cited to shew cause, within three days of the service hereof, why a mandamus should not issue, commanding him to erase said mortgages, and to grant said certificate as aforesaid, and to grant such other remedy as the nature of the case may require.

(Signed,) J. P. BENJAMIN,
*Attorney for petitioner.*

F. B. Conrad, being duly sworn, deposes that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

(Signed,) F. B. CONRAD.

Sworn to and subscribed before me. New Orleans, March 6th, 1843.
(Signed,) ARMAND PITOT, *Clerk.*

Order and continuance entered on minutes, March 7th, 1843.

No. 15,628. J. P. Benjamin, assignee, praying for a mandamus.
15,629. F. B. Conrad, assignee, praying a mandamus.

These two cases were this day taken before the court. J. P. Benjamin, esq., for plaintiff; C. Roselius and Jno. R. Grymes, esq's., for defendant, D. Prieur. After hearing counsel, the case was continued until to-morrow morning.

Order and continuance entered on minutes, March 8th, 1843.

No. 15,628. J. P. Benjamin, assignee, praying for a mandamus.
15,629. F. B. Conrad, assignee, praying a mandamus.

These cases were this day taken up pursuant to adjournment. After hearing the argument, the same was continued until to-morrow.

Order, time to advise. March 9th, 1843.

No. 15,628. J. P. Benjamin, assignee, praying for a mandamus.
15,629. F. B. Conrad, assignee, praying a mandamus.

These cases were this day taken up pursuant to adjournment. After hearing argument of counsel, the court took time to advise.

*Judgment.*

STATE OF LOUISIANA,

*Parish court, in and for the parish and city of New Orleans.*

No. 15,629. F. B. Conrad, assignee of the estate of Thos. Banks, praying a mandamus. March 10th, 1843.

The first question that strikes me in this case is this: What is it I am asked to do? I am asked ultimately to order the recorder of mortgages of the parish of Orleans to execute a judgment of the United States district court for the eastern district of Louisiana, ordering certain mortgages to be erased.

The first inquiry I should have thought ought to have been, whether or not the United States district court had or had not the right to enforce its mandates, and if it had not such a right in this case, whether the assistance of this court could be afforded for obtaining the object desired? This, however, seems to have been left aside by both parties, and the only question is, shall this court issue a mandamus or not.

A mandamus in a case like the present is an order issued by a court of competent jurisdiction to a public officer, to compel him to fulfil any of the duties attached to his office, or which may be legally required of him. (C. P., 834.) In this case, therefore, to ascertain whether a mandamus ought to be issued or not, the first inquiry must be, can the recorder of mortgages be legally required to erase the mortgages in question?

In going into the inquiry, I am not to forget that this court is by no means empowered to reverse the judgment of the United States district court; but when this court is called upon to afford a means of executing such judgment, it is, I conceive, as it would be in cases where this court should be called upon to issue executory process on a foreign judgment, both the right and the duty of the court to inquire, whether the court, who rendered the judgment sought to be enforced, had jurisdiction of the matter.

In my opinion, therefore, the whole question is one of jurisdiction.

Does the jurisdiction of the United States district court extend to ordering the erasure of mortgages existing on property in favor of subsequent mortgages, when the property has been sold on the application of a first mortgagee?

It is contended by the defendant in this rule, that all the powers of the United States district court in these matters is derived *exclusively* from the bankrupt act, and citing that part of the 6th section of that act, which reads as follows: "And the jurisdiction hereby conferred on the district court shall extend to all cases and controversies in bankruptcy, arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to all cases and controversies between such creditor or creditors and assignee of the estate, whether in office or removed; to all cases and controversies between such assignee and the bankrupt; and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy." A party who claims nothing under the bankruptcy, and who has not made himself a party to the proceedings, is not under the jurisdiction of the district court; and that, in proceeding against such a party, the district court exceeds its jurisdiction; and in ordering the wiping off of a man's lien, however remote it may be, the district court adjudges upon his rights.

If the 6th section of the bankrupt act was the only one defining the jurisdiction of the district court, I would deem the position of the defendant's counsel unanswerable; but by recurring to the 8th section, we find "that the circuit court, within and for the district where the decree of bankruptcy is passed, shall have concurrent jurisdiction with

the district court of the same district of all suits, at law and equity, which may and shall be brought by any assignee of the bankrupt against any person or persons claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt, transferable to, or vested in, such assignee;" here we see the district court clothed with the power to decide suits brought by any assignee of the bankrupt against any person claiming an adverse interest, or by such person against such assignee, touching property or rights of property of said bankrupt, transferable to, or vested in, such assignee. Now, the subsequent mortgages, the erasure of whose mortgages has been ordered by the district court, claimed, it seems to me, an adverse interest, touching property or rights of property of the bankrupt, after the sale, with the consent of the first mortgagee, were called into court by the assignee, and notified that their mortgages were to be erased for the purpose of giving titles to the purchasers, reserving to them the right to be paid out of the proceeds, and they made no objection; thereupon the erasure was ordered.

But the counsel for the defendant on the rule contends, that all parties coming in and proving their claim share in the assets of the bankrupt, but abandon all sort of priority or preference; and that those who do not come, preserve all these rights.

I do not pretend to know much about the principles of the bankrupt laws of England, with which it is admitted the provisions of the bankrupt law of Congress have much analogy; but from the quotation at bar I should infer, that under the laws of England, where a creditor who has a lien or security, and he thinks that the property forming the security is not equal to the payment of his debt, he may apply to have it sold, and to be admitted as a creditor for the residue; that a vendor, who is considered in the nature of a mortgagee with respect to his lien for the unpaid purchase money, as such may obtain an order for sale in discharge of his lien, and prove for any deficiency; so that it would appear that the exercise of a right of priority is by no means incompatible with the proving of claims. Now, with regard to subsequent mortgages, I would infer, from the authorities examined, that under the English bankrupt law, although the Lord Chancellor has no authority to compel a second mortgagee, not claiming under commission, but resting upon his security to join a sale obtained by a prior mortgage, still, it seems to be admitted, that on the assignee examining all the mortgages before the commissioners as to the principal and interest due to them, he might advertise the equity of redemption; and if there was any advance upon what is due to the prior and subsequent mortgagees, the assignee or the purchaser might redeem both, (or, under our system of mortgages,) pay off the mortgage debt; and if there was no advance, the mortgagees would be left to their usual remedy, and the creditors would have no further interest in the premises.

The usual remedy here spoken of, I should consider to be the coming in and proving their claim. The operation just detailed would be in perfect accordance to the principle of our laws, that a judicial mortgage sale made on a first mortgage raises subsequent mortgages.

But setting aside all the principles of English jurisprudence, which, as I have before stated, I candidly confess I am very little acquainted with, there appears to me that there must exist somewhere an authority to settle finally the affairs and concern of a bankrupt; especially if the axiom referred to lately by Judge Story, that a commission and decree declaring a man to be a bankrupt is a statute execution for all the creditors. And hence I can easily understand that the object of Congress in adopting the provisions of the 8th section of the bankrupt law above cited, was intended to clothe the district courts with all the powers necessary to effect that final statement; and although the bankrupt court in England may not possess such powers, still we have the authority of the learned judge, (Story,) before mentioned, to state, that the act of Congress, for wise purposes, has conferred a more wide and liberal jurisdiction upon the courts of the United States, than the Lord Chancellor sitting in bankruptcy was authorized to exercise; in short, whatever he might properly do sitting in bankruptcy, or sitting in the court of chancery under his general equity jurisdiction, the courts of the United States are, by the act of 1841, competent to do.

Ex parte John S. Foster, in the Mass. cir. court.

I might, thinking, as I do, that the district court of the United States acted within the exercise of its jurisdiction, have avoided the other explanations I have given above; be it as it may, considering that the district court acted within the scope of its jurisdiction, that this court, even did it differ in opinion with the said district court, which it does not, has no power to revise the judgment of that court; that even in a case of doubt this would not interfere; and that, adversely to a decision of a federal court in a case where the parties interested were called upon to establish their rights, that no opposition appears to have been made by the parties interested in the question whether the mortgages spoken of should be erased or not, and that the only opposition comes from the recorder of mortgages, who can have no other interest but that of performing properly his duty, and to shelter his responsibility.

Finally, that as the matter stands, and on the application made, this court is satisfied that the said recorder of mortgages, in the performance of his duties, is bound to erase the mortgages in question.

It is therefore ordered, adjudged, and decreed, that a mandamus be issued, commanding D. Prieur, esq., recorder of mortgages, for the parish of Orleans, to raise the mortgages recited in the order of the district court of the United States for the eastern district of Louisiana, dated on the 24th February, 1843, of which order a copy is annexed to the petition for a mandamus.

*New Orleans, March 17th*, 1843.

(Signed) CHARLES MAURIAN, *Judge.*

*Document accompanying petition.*

In the bankruptcy of Thomas Banks, United States district court, eastern district of Louisiana, bankruptcy, February 24th, 1843.

Present, the Hon. T. H. McCaleb.

On motion of F. B. Conrad, assignee of Thomas Banks, a bank-

rupt, on giving the court to be informed that, in pursuance of an order of this honorable court heretofore rendered, he did cause to be sold by the marshal of the United States the property surrendered by the said bankrupt to his creditors, known as Banks' arcade, as follows:

*Banks' arcade.*

I. Seven lots of ground situate in the faubourg St. Mary, in the square comprised between Tchapitoulas, Gravier, Magazine, and Poydras streets, and designated by the numbers twelve, thirteen, sixteen, twenty-four, seventeen, eighteen, and nineteen, and measures as follows:

No. twelve measures 22 feet on Natchez street, 57 feet $6\frac{1}{5}$ in depth on the boundary line of lot No. 9; 58 feet $7\frac{1}{5}$ inches on the boundary line of lot No. 13, and 22 feet half an inch in width on the rear line.

No. thirteen measures 22 feet front on Natchez street, 58 feet $7\frac{1}{5}$ in depth on the boundary line of lot No. 12; 59 feet $9\frac{2}{5}$ inches on the boundary line of lot No. 16, and 22 feet half an inch in width on the rear line.

No. 16 measures 22 feet front on Natchez street, by 59 feet $9\frac{2}{5}$ inches in depth on the boundary line of lot No. 13; 60 feet 11 inches in depth on the boundary line of lot No. 24, and 22 feet half an inch in width on the rear line.

No. twenty-four measures 22 feet front on Natchez street, by 60 feet 11 inches in depth on the boundary line of lot No. 16; 62 feet $1\frac{2}{5}$ inches on the boundary line of lots Nos. 16, 17, 18, and 19, and 22 feet half an inch in width on the rear line.

No. seventeen measures 22 feet 6 inches front on Magazine street, by 90 feet 9 inches in depth on one of the side lines; 88 feet 8 inches in depth on the other side line, and 20 feet $8\frac{2}{5}$ inches in width on the rear line.

No. eighteen measures 22 feet 6 inches front on Magazine street, by 88 feet 8 inches in depth on the boundary line of lot No. 17; 86 feet 7 inches in depth on the boundary line of lot No. 19, and 20 feet $8\frac{2}{5}$ inches in width on the rear line.

No. nineteen measures 22 feet 6 inches front on Magazine street, by 84 feet 6 inches in front and depth on Natchez street; 86 feet 7 inches in depth on the boundary line of lot No. 18, and 20 feet $8\frac{2}{5}$ inches in width on the rear line. (All American measure.)

II. A certain irregular lot or portion of ground, situated and forming one of the corners of Magazine and Gravier streets, faubourg St. Mary, measuring 91 feet 9 inches front on Magazine street, by 121 feet 6 inches in depth and front on Gravier street, 109 feet 6 inches in depth on the side line which separates it from the property now or formerly belonging to A. Labranche, measuring back from Magazine street, and 79 feet 6 inches in depth on the other side line which separates it from the property owned by the late Caleb D. Jordan, measuring back from Gravier; American measure.

III. Two certain lots of ground, also situate in the faubourg St. Mary, between Gravier and Poydras streets, and designated by the

numbers three and four, on a plan drawn by Joseph Pilié, city surveyor, on the 20th May, 1830, and deposited in the office of Octave de Armas, a notary public of this city, on the 14th February, 1831.

No. 3 measures 60 feet front on Magazine street, by 150 feet 2 inches in depth on the line separating it from lot No. 4, and 150 feet 6 inches in depth on the other side line; and No. 4 measures 60 feet front on Magazine street, by the same depth on the line separating it from lot No. three, and 147 feet 10 inches in depth on the other side line. (All French measure.)

And on shewing to the court the written consent and authority of the New Orleans Canal and Banking company, the first conventional mortgages on said property, to him, assignee, to sell said property, and to cause the mortgages in their favor hereinafter recited to be cancelled, for the purpose of giving titles to the purchasers, reserving their rights to be first paid out of the proceeds; and on further shewing to the court that the application of him, assignee, to sell said property, and to cause to be cancelled, for the purpose of giving titles to the purchasers, the conventional mortgages on said property hereinafter recited, in favor of the New Orleans and Carrollton Railroad company and City Bank of New Orleans, second and third conventional mortgages respectively, has been duly notified to the said New Orleans and Carrollton Railroad company and the said City Bank of New Orleans, and no objection being made to such application, it is ordered, adjudged, and decreed, that the recorder of mortgages of the parish and city of New Orleans, do erase and cancel from his books the said hereinafter recited mortgages on the said property, in favor of the said New Orleans Canal and Banking company, the said New Orleans and Carrollton Railroad company, and the said City Bank of New Orleans, reserving to said parties respectively their rights upon the proceeds of said property according to the rank of their said respective mortgages.

List of mortgages on property known as Banks' arcade, taken from the certificate of the recorder of mortgages, dated 27th September, 1842, said property is described as No. 3 by the mortgage certificate.

B. 27, F. 347, 15, No. 34,743, entiére. The one he granted by act passed before Wm. Christy, notary, dated 3d May, 1834, in favor of the N. O. Canal and Banking company, on all the property thirdly hereinabove described and known as the Banks' arcade, to secure the sum of seventy-two thousand five hundred dollars, ($72,500,) on which amount forty-eight thousand dollars ($48,000), is paid.

B. 27, F. 502, 16, No. 35,281, entiére. The one he granted by act passed before Wm. Christy, notary, dated 27th June, 1834, in favor of the New Orleans Canal and Banking company, on, 1st, the property thirdly described and known as the Banks' arcade, and the twelve lots of ground herein above thirteenthly described property in 56, to secure forty thousand dollars ($40,000).

B. 37, F. 43, 22, No. 48,258, entiére. The one he granted by act passed before W. Christy, notary, dated 27th April, 1837, in favor of the New Orleans Canal and Banking company, on the ten lots of ground

herein above thirdly described, and known as Banks' arcade, to secure, 1st, twenty-one thousand four hundred and twenty-eight dollars and fifty-eight cents, (21,428 58,) being the balance due to the said company by him, said Banks, under a mortgage which said Banks granted in their favor on his property on Camp and Common streets, known as the City Hotel. And, 2nd, also to secure the sum of fourteen thousand two hundred and sixty-six dollars, ($14,266,) being the balance due to said company by him, the said Banks, under another mortgage which he granted in their favor on the same property.

B. 37, F. 264,27. The one he granted by act passed before W. Christy, notary, dated 25th May, 1837, in favor of the New Orleans Carrollton Railroad and Banking company, on the ten lots of ground, herein above described property, and known as Banks' arcade, to secure four different sums of four thousand dollars, ($4,000,) seven thousand five hundred dollars, ($7,500,) twenty-eight hundred dollars, ($2,800,) and five thousand four hundred dollars, ($5,400,) making together the sum of twenty-nine thousand seven hundred dollars, ($29,700;) and also to secure the payment of any further sums for which the said Banks may hereafter become indebted unto the said company for discounts, renewals, endorsements, or otherwise.

B. 37, F. 431,30. The one he granted, together with his said wife, per act passed before H. B. Cenas, notary, dated 30th June, 1837, in favor of the City Bank of New Orleans, on the said ten lots of ground herein above thirdly described, and known as the Arcade, to secure fifty-five thousand dollars, ($55,000,) payable as per said act.

B. 40, F. 504,32, No. 54,281, partielle. By an act passed before Adolphi Mazureau, notary, dated 18th December, 1838, Thomas Banks promises and binds himself to sell to Louis Simede, on the 1st day of December, 1840, the property known as the Bishop or City Hotel, and also the property known as the Banks' arcade, for the total sum of eight hundred and fifty thousand dollars, ($850,000,) agreeably to certain conditions mentioned in said act.

B. 40, F. 559,33. The one he granted by act passed before Ln. Herman, notary, dated the 27th day of May, 1840, in favor of the New Orleans and Carrollton Railroad company, on the ten lots of ground herein above thirdly described, and known as the Banks' arcade, to secure the sum of thirty-three thousand five hundred and fifteen dollars and eight cents, ($33,515 08,) payable as per said act.

CLERK'S OFFICE, *February 24th*, 1843.

United States district court, eastern district of Louisiana. I certify the above to be a true copy from the original on file.

(Signed,) N. R. JENNINGS, *Clerk.*

*Petition of appeal.—Filed March 21st*, 1843.

F. B. Conrad, assignee of Thomas Banks, praying for a mandamus, Parish court.

[REC. , D. T. 1847.]—10

Denis Prieur humbly prays an appeal from the final judgment rendered herein.

(Signed,) JNO. R. GRYMES, *for defendant.*

*Order.*

Let an appeal be allowed in this case, returnable in the supreme court forthwith; by consent of parties, New Orleans, March 21st, 1843.

(Signed,) CHARLES MAURIAN, *Judge.*

I do hereby certify, that the foregoing fifteen pages contain a full, true, and perfect transcript of all proceedings had, and documents filed, in the case of F. B. Conrad, assignee, &c., praying for a mandamus, and that no mandate from the supreme court has been filed in this court since the appeal taken herein.

In testimony whereof I hereunto set my hand and affixed the seal of the court, this 18th day of May, 1844, and 68th year of the independence of the United States.

[SEAL.]

(Signed,) C. WEYSHAM, *Dy. clerk.*

*Doc't M, special power, filed 29th April,* 1844; *filed in evidence April 24th,* 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known that, on this seventeenth day of February, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States of America the sixty-seventh, before me, David Lawson McCay, notary public in and for the parish of Orleans, residing in the city of New Orleans, in the State of Louisiana, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally came and appeared Mr. William Houston, of London, in England, now in this city, who declared that he does, by these presents, make, nominate, ordain, authorize, constitute, and appoint, and in his place and stead depute and put Mr. Peter Maxwell, of this city, to be his true and lawful attorney in fact, general and special, giving, and by these presents granting, unto the said attorney full power for him, and in his name, and to his use, to conduct, manage, and transact all and singular his affairs, business, and concerns in this city and State, of whatever nature or kind soever; for him and in his name and behalf to purchase such real estate, lying and being situate in this State, at such prices, and on such terms and conditions, as he may think advisable for the interest of him, this constituent, and in his name to accept the acts of sale of such real estate as he may purchase for him as aforesaid; and also of such real estate as the said constituent may have already purchased, or may hereafter purchase, before his departure from the city; to issue the notes of the said constituent for the credit portion of the purchase money of such real estate as may have been, or may be, purchased as aforesaid; and in his name to consent to mortgages on the same to secure the payment of said notes, in compliance with the terms and conditions of the sales at which the same may have been or may be purchased; to lease and let all or any part of the real estate that may be so purchased, and to receive and receipt for the rent as the same

shall fall due; to sue for rent, and take out provisional seizure, if necessary, to secure the payment thereof; to make such repairs as may be necessary; to issue notes of the constituent for the same; to make, sign, and execute, in the name of the constituent, all acts, whether of sale, lease, release, contract or otherwise, that shall or may be requisite or necessary; to ask, demand, have, take, and, by all lawful ways and means, to recover and receive of and from all and every person and persons whomsoever, all and every such sum and sums of money as now is, or are, or may hereafter be due, owing, and coming, or belonging to him, the said constituent, for any reason or means soever; to that end, with whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises, to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do and prosecute, as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise, as the said attorney shall in his discretion think fit; also with full power of substitution and revocation; and the said constituent does hereby agree to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed in my office, at the city of New Orleans, the day and year aforesaid, in the presence of Messrs. George Lanaw and James P. Gilly, both of this city, competent witnesses, who hereunto sign their names, together with the said appearer, and me, the said appearer.

Signed, W. HOUSTON,
G. LANAW,
J. P. GILLY,
DAVID L. McCAY,
*Notary public.*

A true copy of the original, New Orleans, April 22d, 1844.
[SEAL.] (Signed,) DAVID L. McCAY,
*Notary public.*

*Continuance.*

CITY BANK OF NEW ORLEANS vs. WILLIAM HOUSTON and als. } No. 6611.

This case came on this day for trial before the court. Micon and Wilde, for plaintiff; Peirce, Roselius, Grivot, Eyma, Conrad, for defendants. After hearing pleading and evidence, the same was continued till Saturday next, at 11 o'clock, A. M.

(Extract from the minutes, April 24th, 1845.)

*Order duces tecum.*

CITY BANK OF NEW ORLEANS vs. WILLIAM HOUSTON and als. } No. 6611.

On motion of F. B. Conrad, of counsel for defendants, ordered that R. J. Palfrey, cashier of the City Bank, produce in court on Saturday

next, at 11 o'clock, A. M., the minutes of the proceedings of the Board of Directors from 1st June, 1842, to January, 1844, in regard to any and all proceedings of the bank relative to the debt and mortgage of Thomas Banks to the bank, and to the Arcade property.

(Extract from the minutes, 24th April, 1845.)

*Sheriff's return.*

Received April 25th, 1845, and on same day served the within order on R. J. Palfrey in person; returned April 26th, 1845.

(Signed,) ARM. GUYOL,
*Deputy sheriff, C. C.*

*Testimony in open court, filed 26th April, 1845.*

CITY BANK N. O., vs. HOUSTON et als. } Commercial court.

Defendants offer in evidence the deeds of sale of the assignee of Banks to J. Freeland, F. M. Hatch, and Banchard, which are marked N, O, P, Q.

The copy of the deed of sale to a portion of the property the defendants reserve the right of filing, as well as the certificate of the recorder of mortgages on the same. Also a copy of the decree of the Supreme Court in the case of Conrad, assignee, vs. Prieur, recorder of mortgages.

Defendants offer in evidence the proceedings in the bankruptcy of Thomas Banks, which is marked R.

F. B. Conrad states, that in conformity with the judgment of the district court of the U. S., the notes and cash proceeds of this Arcade property were paid over to the New Orleans Canal and Banking Company, they being the first mortgagees.

Defendants offer in evidence the act of mortgage to the New Orleans Canal and Banking Company by Thomas Banks, passed before Wm. Christy on the 27th June, 1834, as well as the judgment of the parish court in the case of the New Orleans Canal and Banking Co. vs. Thomas Banks, No. 14,998, of which copies will be furnished.

R. J. Palfrey, for defendant, sworn, says, that he was cashier of the City Bank when the property was sold, and was aware that the property was to be sold. Was not present at the sale. Saw the advertisements of the sale in the newspapers. The President, S. J. Peters, attended to the business of real estate of the bank. Do not know whether Mr. Peters knew any thing of the sale, but presumed he knew it. Never heard any conversation in the Board of Directors in relation to that sale. Never had, nor knows that any one had, any communication from the counsel of the bank before the sale took place. Never heard the President say he had received any communication from the counsel of the bank. The communication received from the counsel of the bank, after the sale had taken place, is on the minutes of the bank.

*Cross examined.*

The communication from the counsel of the bank, entered on the minutes, is of date of 13th November, 1843. It is the only communication from the counsel which is on the minutes. There is nothing prior to the date of this communication in relation to the sale of Banks' property on the minutes of the bank.

Wm. A. Holt, for defendant, sworn, says, that he attended to the business of the assignee of Banks as record keeper. Wrote the advertisements for sale of the property. The advertisements were made in accordance with the order of court; was very particular in examining the advertisements; read them all over. Bills and pamphlets were posted, in addition to the advertisements ordered by the court, at the corners of streets and public places. The bills and pamphlets were published by the Bee, and the carriers of this paper were directed to distribute them with the newspapers. This sale, being a large one, attracted the public notice. Witness was several times in the room during the time the sale took place. The room was very crowded. In addition to the bills, notices, and pamphlets, the attention of the public was called by the editors of newspapers in an article published on the day of sale.

Wm McCawley, for the defendant, sworn, says, that he was present at the sale of Banks' property; besides the Arcade, there was a very large amount of other property sold belonging to Banks' estate; there was a very large crowd of persons present at the sale. Witness considers that the mode of selling the property in small lots was calculated to enhance the amount of the sale; thinks that it could be sold better in stores than in block.

H. Lockett, for defendant, says, that he is the counsel of plaintiff. That it is his impression that he knew that the property was to be sold. Witness heard a great deal of noise and talk about this sale, and almost all what he knew about this matter was from hearsay.

It is agreed that the copy of process verbal of Banks' arcade sale by assignee, marked B, and on file, be received as if signed by the marshal.

It is admitted that the mortgages recited in the act of mortgage, from Banks and wife to the City Bank, marked A, to the mortgages marked 1st, 2nd, and 3rd, were mortgages in favor of the Canal and Banking Company.

The case is closed for the defence, except for the title of Mr. Fisk, and defendants reserve the right of offering the testimony of S. J. Peters, or having him sworn in court, and of offering a paper from Canal Bank, addressed to the assignee of Banks, F. B. Conrad, esq., and the certificate of discharge of Thomas Banks, offered by counsel of F. M. Fisk.

Plaintiffs offer in evidence the proceedings in the bankruptcy of Banks, which is marked S.

M. W. Butler, for plaintiff, sworn, says, that he is assistant clerk of the United States district court; recollects having superintended the making of transcript marked S; it was prepared in the office of the clerk.

Witness has brought into court the original of the notice, headed December 23d, 1842, and the marshal's return thereon, and he compares it with the copy on page 14, 15, and says the copy is a correct copy of the original as it existed at the date of the certificate of the transcript; the transcript referred to by witness is marked S. Witness' attention being called to the words interlined in the original, to wit, the words "and as regards said bank, service was made at the banking houses," says the interlineation was made about one week ago by Mr. Gavin, the deputy marshal, in presence of Mr. Conrad. The attention of witness is now called to the face of the original notice; says that the words "Thursday the 5th," have been altered on the face of the paper to "Friday the 6th;" witness made the alteration at the request of Mr. Conrad, he, witness, knowing that it was a clerical error; thinks that the alteration was made about a week since, and at the same time as the interlineation was made by Mr. Gavin.

Being shewn transcript marked R, produced in evidence by defendants, page 14, states, he cannot say why the blank between the words in and the word January, exists except by omission. Being asked to state what he means by saying that the words, "Thursday the 5th," were inserted by clerical error, says that the minutes, the order for publication, and the orders on the petition, and the printed advertisements, all stated "Friday the 6th," from which the witness inferred that the words, "Thursday the 5th," in the notice to mortgage creditors, was a clerical error. The witness' attention is called to the words "as regards said banks, service was made at their banking houses," at the top of the page 15 of the transcript marked R, filed by defendants; witness' attention is also called to the fact, that the same words are interlined in the original return now before him, between the words "above stated," at New Orleans, ret'd, &c. Being asked to say why they appear in one place in the transcript and at another in the original paper, he says the words were placed in the transcript where they are to avoid an interlineation. In referring to the minutes and the proceedings, he refers to those entries upon the minutes, and those proceedings which are copied in the two transcripts on file.

*Cross-examined.*

Witness observed to Mr. Conrad that there was a clerical error contained in the original paper which he has before him, which witness said he better have corrected, to make it conform with the original petition and the records of the court. Witness issued one notice for each mortgage creditor; witness does not know that the error which exists on the face of the notice produced by him existed in the other notices issued by him to the mortgage creditors; witness is certain that the advertisements contain Friday, the 6th day of January, 1843, was correct; witness suggested to Mr. Conrad, that there was an error in the notice to mortgage creditors that did not agree with the original petition and with records of the court, and suggested the propriety of making the change to make it comply with the orders on the petition and on the minutes; Mr. Conrad gave his consent to it, and it was done.

Doc. N.

*Notarial copy of sale, filed in evidence 26th April*, 1845.

STATE OF LOUISIANA, *city of New Orleans.*

Before me, Joseph Benzaken Marks, notary public in and for the parrish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana. Sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court. And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

(Signed) N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *D'y clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the 25th February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, 1843, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas

Banks to his creditors; at which public sale the hereinafter described property was adjudicated to John Freeland, of this city, for the price and sum of eight thousand one hundred dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity, (if not then paid,) at the rate of ten per cent. per annum, until final payment; he being the last and highest bidder for said property, which is of the description following, to wit:

A certain lot of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, making part of the building known as "Banks' arcade," situated in Municipality No. two, of this city, in the square bounded by Gravier, Tchapitoulas, Natchez, and Magazine streets, designated by the No. *eleven*, on a plan drawn by James H. Dakin, on the fifteenth of January last, and deposited as plan No. forty-eight, in the book of plans of the undersigned notary. Said lot measures in English measure, twenty-three feet front on said Gravier street, eighty-one feet eleven inches and one half of an inch in depth on the side adjoining lot No. twelve on said plan, sixteen feet six inches width in the rear, and eighty-four feet five inches in depth and front on the Arcade passage, which passage is in common to all the lots fronting thereon. The lot of ground herein conveyed makes part of a larger portion of ground acquired by said Thomas Banks from Mrs. Catharine Wray, by an act passed before William Christy, a notary public in this city, on the first day of March, eighteen hundred and forty-three.

By reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said F. B. Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said John Freeland, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the property herein before described. To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of eight thousand one hundred dollars, in part payment and in deduction of which said purchaser has paid the sum [of]

two thousand seven hundred dollars in ready money; and in payment and liquidation of the balance of said price, to wit, the sum of five thousand four hundred dollars, said purchaser has furnished his five several promissory notes, for the sum of one thousand and eighty dollars each, drawn to his own order, and by himself endorsed, dated the said fifteenth day of February, 1843, and payable respectively at six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payment beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, for the purpose of identifying them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof. And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, promising and binding himself not to sell, alienate, deteriorate, or incumber the same, to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in the presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said appearers, and me, the said notary.

Original signed: JOHN FREELAND,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register, New Orleans, this ninth day of June, 1843.

(Signed,) JOS. B. MARKS, *Not. Pub.*

*Document O.*

(Notarial copy of sale,) filed in evidence, 26th April, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses:

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Dy. clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the 25th of February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to John Freeland, of this city, for the price and sum of eleven thousand nine hundred dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, situated in the Municipality No. two, of this city, making part of the building known by the name of Banks' arcade, designated by the No. one, on a plan drawn by James H. Dakin, on the 15th of January last, and deposited as plan No. forty-eight, in the book of plans of the undersigned notary; said lot forms the corner of Magazine and Gravier streets and the Arcade passage, and measures in English measure twenty-four feet ten inches and five eighths of an inch front on Magazine street, fifty-nine feet nine inches and one half of an inch in depth on Gravier street, fifty-nine feet eight inches and one fourth of an inch in depth on the side adjoining lot No. two on said plan, and twenty-six feet three inches and one half of an inch width in the rear and front on the Arcade passage, which passage is common to all the lots fronting thereon.

The lot of ground herein conveyed makes part of a larger portion of ground acquired by said Thomas Banks from Mrs. Catherine Wray, by an act passed before William Christy, a notary public in this city, on the first day of March, eighteen hundred and thirty-three.

By reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis B. Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said John Freeland, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the property hereinbefore described. To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the abovementioned adjudication, is made and accepted for and in consideration of the price and sum of eleven thousand nine hundred dollars, in part payment and deduction of which said purchaser has paid the sum of three thousand nine hundred and sixty-six dollars sixty-six cents, in ready money; and in payment and liquidation of the balance of said price, to wit, the sum of seven thousand nine hundred and thirty-three dollars thirty-four cents, said purchaser has furnished his five several promissory notes for the sum of fifteen hundred and eighty-six dollars sixty-six and four-fifths cents each, drawn to his own order and by himself endorsed, dated the said fifteenth day of February, eighteen hundred and forty-three, and payable respectively at six, twelve, eighteen,

twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payment beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, for the purpose of identifying them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed,

JOHN FREELAND,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE.
JOS. B. MARKS,
*Notary Public.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this 9th day of June, 1843.

(Signed) JOS. B. MARKS, *Not. Pub.*

*Document P.*

Notarial copy of sale, filed in evidence 26th April, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses:

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of petition of Thomas Banks, to be declared bankrupt, No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings. N. R. JENNINGS, *Clerk*.

By ED. LAUVE, *Deputy clerk of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, bearing date the twenty-fifth February, eighteen hundred and forty-three, and of record in the office of the undersigned notary, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Francis Hanson Hatch, of this city, for the price and sum of three thousand three hundred dollars, payable one-third in cash, the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear an interest from maturity (if not then paid) at the rate of ten per cent. per annum until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in Municipality No. two, of this city, in the square bounded by Gravier, Tchapitoulas, Natchez,

and Magazine streets, designated by the number twenty, on a plan drawn by James H. Dakin, dated fifth of January last, and deposited as plan No. forty-eight in the book of plans of the undersigned notary; said lot measures in English measure twenty-two feet ten inches and one-half of an inch front on Natchez street, fifty-eight [feet] eleven inches and seven lines in depth on the side adjoining lot No. twenty-one on said plan, sixty feet five inches and ten lines in depth on the side adjoining lot No. nineteen on said plan, and twenty-four feet eleven inches width in the rear.

Which lot makes part of lots Nos. thirteen and sixteen, on a plan drawn by Joseph Pilié, on the twenty-sixth of January, eighteen hundred and twenty-eight, and annexed to an act passed before G. R. Stringer, a notary public in this city, dated twenty-sixth of December, eighteen hundred and twenty-eight, aquired by said Thomas Banks, (with other lots,) from M. Morgan, by an act passed before Louis T. Caire, a notary public in this city, on the twenty-sixth of May, eighteen hundred and thirty-one.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Francis Hanson Hatch, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the lot of ground, with the buildings thereon, rights, ways, privileges, &c., thereunto belonging, as herein before described.

To have and to hold the said lot of ground, buildings, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of three thousand three hundred dollars, in part payment and deduction of which said purchaser has paid the sum of eleven hundred dollars in ready money; and in payment of the balance of said price, to wit, the sum of twenty-two hundred dollars, said purchaser has furnished his five several promissory notes for the sum of four hundred and forty dollars each, to his own order, and by himself endorsed, dated the fifteenth day of February, eighteen hundred and forty-three, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid at

the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments longer [than] the periods of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself and his heirs not to sell, alienate, deteriorate, or incumber the said property to the prejudice of this mortgage.

Done and passed in my office, at the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said appearer, and me, the said notary.

Original signed, F. H. HATCH,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this 10th day of June, 1843.

[SEAL.] (Signed,) JOS. B. MARKS, *Not. Pub.*

*Document Q.*

Notarial copy of sale, filed in evidence 26th April, 1845.

STATE OF LOUISIANA, *city of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana. Sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act

of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Deputy clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this [office,] under date of the twenty-fifth February, eighteen hundred and forty-three, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors.

At which public sale the hereinafter described property was adjudicated to Samuel Gardiner Blanchard, of this city, for the price and sum of five thousand and fifty dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid,) at the rate of ten per cent. per annum, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in Municipality No. two, of this city, in the square bounded by Gravier, Tchapitoulas, Natchez, and Magazine streets, designated by the number twelve, on a plan drawn by James H. Dakin, dated the fifth of January last, and deposited as plan number forty-eight, in the book of plans of the under-

signed notary; said lot measures in English measure twenty-three feet six inches and one half of an inch front on said Gravier street, eighty-one feet eleven inches and one-half of an inch in depth on the side adjoining lot number eleven on said plan, seventy-nine feet six inches in depth on the side nearest Tchapitoulas street, and fourteen feet nine inches width in the rear.

Which lot makes part of a larger portion of ground acquired by said Thomas Banks from Mrs. Catharine Wray, by an act passed before William Christy, notary public in this city, on the first day of March, eighteen hundred and thirty-three.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee, as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Samuel G. Blanchard, here present, and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession [of] the property herein before described.

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt held in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the abovementioned adjudication, is made and accepted for and in consideration of the price and sum of five thousand and fifty dollars, in part payment and deduction of which said purchaser has paid the sum of sixteen hundred and eighty-three dollars thirty-five cents in ready money; and in payment of the balance of said price, to wit, the sum of three thousand three hundred and sixty-six dollars sixty-five cents, the said purchaser has furnished his five several promissory notes for the sum of six hundred and seventy-three dollars thirty-three cents each, drawn to his own order, and by himself endorsed, dated the said fifteenth day of February last, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due. Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes,

of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Deputy clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this [office,] under date of the twenty-fifth February, eighteen hundred and forty-three, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors.

At which public sale the hereinafter described property was adjudicated to Samuel Gardiner Blanchard, of this city, for the price and sum of five thousand and fifty dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid,) at the rate of ten per cent. per annum, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in Municipality No. two, of this city, in the square bounded by Gravier, Tchapitoulas, Natchez, and Magazine streets, designated by the number twelve, on a plan drawn by James H. Dakin, dated the fifth of January last, and deposited as plan number forty-eight, in the book of plans of the under-

signed notary; said lot measures in English measure twenty-three feet six inches and one half of an inch front on said Gravier street, eighty-one feet eleven inches and one-half of an inch in depth on the side adjoining lot number eleven on said plan, seventy-nine feet six inches in depth on the side nearest Tchapitoulas street, and fourteen feet nine inches width in the rear.

Which lot makes part of a larger portion of ground acquired by said Thomas Banks from Mrs. Catharine Wray, by an act passed before William Christy, notary public in this city, on the first day of March, eighteen hundred and thirty-three.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee, as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Samuel G. Blanchard, here present, and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession [of] the property herein before described.

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt held in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the abovementioned adjudication, is made and accepted for and in consideration of the price and sum of five thousand and fifty dollars, in part payment and deduction of which said purchaser has paid the sum of sixteen hundred and eighty-three dollars thirty-five cents in ready money; and in payment of the balance of said price, to wit, the sum of three thousand three hundred and sixty-six dollars sixty-five cents, the said purchaser has furnished his five several promissory notes for the sum of six hundred and seventy-three dollars thirty-three cents each, drawn to his own order, and by himself endorsed, dated the said fifteenth day of February last, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due. Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes,

with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, promising and binding himself not to sell, alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in the presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed,

S. G. BLANCHARD,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this ninth day of June, eighteen hundred and forty-three.

(Signed) JOS. B. MARKS.
*Notary public.*

*Doct. R.*

Proceedings in bankruptcy, filed in evidence April 26th, 1845. United States of America, in bankruptcy. Petition filed 30th July, 1842.

*Petition by debtor for benefit of the act of Congress.*

To the honorable the judge of the United States district court for the eastern district of Louisiana.

Respectfully represents: The petition of Thomas Banks, residing in the parish of Orleans, and State of Louisiana, that he is owing debts in his private right and capacity to sundry creditors, a list of whose names and places of residence, and the amount due to each, according to the best of his knowledge and belief, is contained in the schedule hereto annexed, marked " A," and that the said schedule so marked contains also an accurate inventory of his property, rights, and credits, of every name, kind, and description, and of the location and situation of each and every parcel and portion thereof; that he is unable to meet his engagements, and he therefore applies to this honorable court for the benefit of the act of Congress, entitled " an act to establish a uniform system of bankruptcy throughout the United States," and prays that, after due proceedings had, he may be declared by a decree of the court to be bankrupt, within the purview of the said act; and upon his compliance with all the requisitions of the said act, and all the orders and

directions of the court in the premises, that he may be decreed to have a certificate of discharge from all his debts proveable under the said act, and otherwise entitled to all the benefits thereof; and in the event of there being any errors in said he prays to be allowed to correct the same hereafter by means of an amended schedule.

(Signed by the petitioner,) THOMAS BANKS.

On this 30th day of July, A. D. 1842, sworn to by the petitioner before me,

(Signed) W. J. VASON,
*Commissioner of the said court, &c.*

Order of the court thereon.

*District court.*

On this 30th day of July, A. D. 1842:

Upon reading the foregoing petition, it is ordered by the court that notice thereof be published in two newspapers, printed in the district, at least twenty days before the 5th day of September, when a hearing will be had on the said petition, at 10 o'clock in the forenoon, so that persons interested may appear at the said time and place, and shew cause, if any they have, why the prayer of the petitioner should not be granted.

(Signed) ED. LAUVE,
*Deputy clerk of the court.*

*Liabilities. Extract from the schedule, filed July 30th,* 1842.

City Bank, New Orleans. Loans on mortgage and pledge of stock, with interest - - - - - $63,250 00

*Assets. Extract from the schedule, filed 30th July,* 1842.

The block of three story brick buildings, forming the entire front on Magazine street, between Gravier and Natchez streets, with rear block known as the Arcade Exchange, valued at - - - - - $350,000 00

*Decree of Bankruptcy and appointment of assignee.*

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks, of New Orleans, be, and he is hereby, declared and decreed a bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that Francis B. Conrad, of New Orleans, be, and

he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court. And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said assignee.

*Bond, filed 9th September*, 1842.

United States of America, district court for the eastern district of Louisiana.

We, F. B. Conrad, John Nicholson, and C. Adams, jr., of the city of New Orleans, State of Louisiana, are held and firmly bound to the United States of America in the sum of thirty thousand dollars; to payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, by these presents. Signed on this ninth day of September, eighteen hundred and forty-two.

Whereas, F. B. Conrad has been, on the fifth day of September, eighteen hundred and forty-two, by order of the district court of the United States for the eastern district of Louisiana, appointed assignee of the estate of Thomas Banks, a bankrupt, this bond is executed pursuant to the ninth section of the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841, and is conditioned for the due and faithful discharge of all his duties by the said F. B. Conrad as such assignee, and for his compliance with the orders and directions of the court in the matter of the bankruptcy of the said Thomas Banks.

(Signed) F. B. CONRAD, [L. S.]
JOHN NICHOLSON, [L. S.]
C. ADAMS, Jr. [L. S.]

Sealed and delivered in presence of—

ED. LAUVE.

Clerk's office of the United States district court, eastern district of Louisiana.

Personally appeared John Nicholson and C. Adams, jr., the secureties who have affixed their names to the above bond; each of them being duly sworn, declares that his estate, interest, rights, and credits, after payment of his debts, exceeds in value the amount of the bond required to be given by F. B. Conrad, assignee of the above named bankrupt, according to the order of the court.

(Signed) C. ADAMS, Jr.,
JOHN NICHOLSON.

Sworn to and subscribed before me, this ninth day of September, 1842.

(Signed) E. LAUVE, *Dy. clerk.*

*Petition of assignee.*

In the matter of Thomas Banks, in bankruptcy; United States district court, eastern district of Louisiana.

The petition of Francis B. Conrad, assignee of the above entitled bankruptcy, humbly shews:

That the property surrendered by said bankrupt is very large and valuable, and consists in part of the establishments known in the city of New Orleans as the City Hotel, the Arcade Exchange, the National Hotel, and the Commercial Hotel; that these establishments are each of such great value that if sold in block, in the present embarrassed state of affairs, so few persons have the means of purchasing, that there would be no competition, and the sale would be attended with a very ruinous sacrifice; that in petitioner's opinion it would be much more advantageous to subdivide said establishments as far as practicable, so as to reduce the value of each property to an amount that would admit of competition amongst bidders at the sale; that for the purpose it will be necessary to have plans made of the property, division walls erected, and it would also be advantageous to have advertisements inserted in the newspapers of some of the northern and eastern cities; that the delay necessary for preparing to make the sale, will be such as to retard it until the beginning of the year eighteen hundred and forty-three; that in the mean time the leases of the property, or of the greater portion of it, will expire on the first November, eighteen hundred and forty-two; that the usual and most advantageous terms of lease, in New Orleans, are annual leases, terminating on the first of November of each year; that not only will better [prices] be obtained by renting the property for one year from the first November next, but prices more advantageous will be given for property when sold with tenants occupying it, than if not occupied; and that petitioner is therefore desirous of being authorized to lease the property of the bankruptcy for the space of one year from the first of November next, viz., up to the thirty-first October, eighteen hundred and forty-three.

Now, petitioner shews, that nearly the whole of said property is subject to mortgage; that the mortgagees are not willing that the property should be leased as aforesaid, nor that the sale should be deferred, except on the condition that the accruing rents shall enure to their benefit under the mortgages, so far as may be necessary to liquidate their claims against the property; and that the rents which will accrue will, in the opinion of petitioner, suffice not only to pay the accruing interest on the mortgage debts, but also to extinguish a part of the capital, and defray the expenses of repairs, insurance, plans, &c.

Wherefore, this petitioner humbly prays to be permitted to rent the property of the bankruptcy, so far as he may deem expedient, on leases to expire on the thirty-first October, eighteen hundred and forty-three, and to compromise with the mortgage creditors as follows, viz., that they shall consent to a postponement of the sale until the necessary preparations can be made as hereinbefore explained, on condition that the

accruing rents shall, after payment of the expenses of repairs, insurance, &c., be applied towards the satisfaction of the debts secured by mortgage respectively on the property on which such rents shall accrue.

And this petitioner humbly prays the court to order the advertisement required by him, of this his application for authority to lease and to compromise, to be made in due form.

(Signed) J. P. BENJAMIN, *Attorney.*

*Order of the court.*

Let the prayer of the petitioner be granted, and let publications be made according to law in the New Orleans Bee and the Commercial Bulletin.

(Signed) THEO. H. McCALEB,
*U. S. district judge.*

Filed 10th October, 1842.

*In the bankruptcy of Thomas Banks. F. B. Conrad, assignee.*

Present, the honorable T. H. McCaleb.

*October* 10*th*, 1842.

J. P. Benjamin, esq., of counsel for said assignee, presented a petition to the court, praying to defer the sale of property, and to lease the same until the thirty-first of October, eighteen hundred and forty-three; the court having considered the same, directed publication of notice, and fixing the 24th day of October, at 10 o'clock, A. M., for the hearing thereof.

*Rules of court, adopted* 10*th October,* 1842.

*Rule* 4*th.* This application for sale shall be notified to the creditors in general by ten days advertisement, to be inserted at least three times in the two newspapers, unless specially ordered otherwise. In addition to this notice, personal notices shall be served on all creditors, residents of New Orleans, who have a special mortgage, lien, or privilege, on any of the property, whether moveable or immoveable, so far as the names of such creditors can be ascertained by the assignee from the schedule of the bankrupt, and from the office of the recorder of mortgages in the respective parishes where the property is situated.

5*th.* Creditors by mortgage, lien, or privilege, shall in all cases be permitted to fix the terms of sale of the property subject to their claims; provided, that in no case shall they be permitted, in opposition to the assignee, to fix the terms of credit shorter than those to which the bankrupt himself was entitled.

6*th.* The order of sale when granted shall ipso facto annul the mortgages, liens, and privileges existing on the property ordered to be sold; and the recorders of mortgages shall, on the presentation of such order, cancel all inscriptions existing on their records against such property, and the mortgages, liens, and privileges shall attach to the proceeds of the sale in the same manner, to the same extent, and with the same effect, as to the property sold.

In the bankruptcy [of] Thomas Banks; F. B. Conrad, assignee. Petition to rent the estate and to compromise with the mortgage creditors.

Monday, October 24th, 1842. Present the Hon. T. H. McCaleb.

This petition being called for hearing, upon the motion of the counsel for the assignee, Benjamin, esq., and shewing to the court that the same has been duly published, and certain creditors are at present in court represented by their attorneys, and it not appearing to the court that sufficient cause has been shewn why the prayer of the petitioner should not be granted, it is therefore ordered that the said assignee be authorized to rent the property of the bankrupt from the first of November next, for the twelve months following, and to compromise with the mortgage creditors as prayed for in his petition.

In the matter of Thomas Banks, in bankruptcy. Filed January 14th, 1843.

UNITED STATES DISTRICT COURT, *eastern district of Louisiana:*

The petition of Francis B. Conrad, assignee, humbly shews, that in his petition, heretofore filed in this honorable court, he expressed the intention and desire of having the sale of the property advertised in some of the northern and eastern cities. That this honorable court has granted an order for the sale of said property; that the application for sale and order therefor, and the preparation of the advertisements, have been very much delayed by reason of the great difficulty petitioner experienced in obtaining from Mr. Dakin, (the architect employed for that purpose,) the plans necessary to shew the details of the subdivision of the property; that the advertisement is now prepared and ready for insertion; that the creditors in New Orleans, who are chiefly interested in the sale, are most urgent for immediate insertion of said advertisement, and strenuously object to a delay of the sale beyond the fifteenth of next month, (February;) that an advertisement at the North for a sale on that day would now be useless and productive of expense only, without any corresponding advantage.

But inasmuch as some of the creditors, or this honorable court, may perhaps be impressed with the opinion that this petitioner ought to make such advertisements at the North as aforesaid, he deems it his duty respectfully to submit to the court the facts aforesaid, and to pray, the circumstances being considered, that he be authorized to make said sale on the fifteenth February next, (1843,) after inserting advertisements thereof in three of the newspapers of this city only; the said advertisements to be in French and English in one of the papers, and in English only in the other two papers.

(Signed,) BENJAMIN, *Att'y for petitioner.*

*U. States district court, Friday, January 15th,* 1843.

Upon reading and considering the foregoing petition, there appearing to the court no good reason why the prayer of the petitioner should not be granted, it is therefore ordered that the publication of the property of the bankrupt in the northern papers, for sale, be dispensed with; that

advertisement of said property be inserted, according to the previous order of this court, in two of the newspapers of this city, to wit, the New Orleans Bee in French, and the Tropic in English, and in any other paper of this city at the discretion of the assignee.

It is further ordered that the sale do take place on the fifteenth of February next, at 12 o'clock, M., either at Bank's arcade, or at the Exchange on St. Louis street.

(Signed,) N. R. JENNINGS, *Clerk.*

Attest, January 15th. N. R. J. *Clerk.*

In the bankruptcy of Thomas Banks, No. 353.

*Extract.*

From the records and from the papers on file in the United States district court, in and for the eastern district of Louisiana, in the above entitled bankruptcy.

F. B. CONRAD, Esq., *Assignee.*

UNITED STATES OF AMERICA, *in bankruptcy.*

Petition of assignee to sell estate of bankrupt. Petition filed 23d December, 1842.

To the honorable the judge of the United States district court for the eastern district of Louisiana.

Respectfully shows, Francis B. Conrad, of New Orleans, assignee of the estate of Thomas Banks, of New Orleans, as a bankrupt; that the said Thomas Banks at the time of his bankruptcy was seized and possessed of the estate and property in the schedule hereto annexed, marked "A," specially set forth; that it will be for the benefit of the said estate, and of all parties having interest therein, that the same should be sold, transferred, and assigned. Wherefore, the petitioner prays the court to pass an order for that purpose, according to the provisions of the act of Congress.

(Signed,) F. B. CONRAD, *Assignee.*

*Order on the foregoing petition.*

UNITED STATES DISTRICT COURT, *eastern district of Louisiana.*

On this twenty-third day of December, A. D. eighteen hundred and forty-two, upon reading the petition aforesaid, it is ordered by the court that due notice thereof be published in two newspapers, printed in the district, ten days at least before the time assigned for the hearing; that a hearing of the said petitioner will be had on Friday, the 6th of January, at ten o'clock, A. M., when and where all creditors, the bankrupt, and other persons in interest, may appear and show cause, if any they have, why the prayer of the said petitioner should not be granted.

(Signed,) N. R. JENNINGS, *Cl'k of the court.*

*Extract of the minutes.*

In the bankruptcy of Thomas Banks; F. B. Conrad, assignee. Petition to sell all the real estate surrendered, slaves, &c.; Friday, December 23d, 1842.

On reading the above entitled petition, it is ordered by the court, that the day of hearing be fixed for the sixth of January, notice to be published in the Picayune, Tropic, and Bulletin, and ordered that personal notices be served upon the following mortgage creditors: the Union Bank of Louisiana, the New Orleans Canal and Banking Company, Bank of Louisiana, Lucius C. Duncan, Samuel B. Davis, through George Strawbridge, esq., his attorney, Louisiana State Marine and Fire Insurance Company, Municipality No. 2, New Orleans Carrollton Railroad Company, City Bank of New Orleans, the President, Directors, and Company of the Bank of the United States, through C. Adams and Frazier. receivers, and Lauve, Brothers.

*Copy of notice to mortgage creditors.*

In the bankruptcy of Thomas Banks. Petition of F. B. Conrad, assignee, to sell the real estate surrendered by the bankrupt.

In bankruptcy, United States district court, eastern district of Louisiana.

Present, the honorable T. H. McCaleb.

*December 23d*, 1842.

The assignee of the said estate having filed in this court a petition as above described, it is ordered by the court, that a hearing of said petition be had on January, eighteen hundred and forty-three, at 10 o'clock, A. M., when, as one of the mortgage creditors of said estate, you are notified to appear and shew cause why the said assignee should not be authorized to erase and cancel all the mortgages, judgments, and liens, recorded in favor of certain creditors of said estate, so that he may convey a clear and unincumbered title to any purchaser thereof; reserving to such creditors all their rights in law to the proceeds of the sale of the said property upon the final distribution thereof; and why the said property should not be sold in the manner and form, and upon the terms suggested by the assignee, as particularly set forth in the schedule annexed to his said petition, and filed in court.

[SEAL.] (Signed) N. R. JENNINGS, *Clerk.*

*Marshal's return of service.*

Received December 28th, 1842, and served copy of the within order of court on the above named parties, in the manner and on the date above stated, at New Orleans. Returned, 4th January, 1843.

1. Union Bank of Louisiana, personally on F. Frey, cashier, 29th.
2. The New Orleans Canal and Banking Co., personally on B. Chew, cashier, 29th.
3. The Bank of Louisiana, personally on W. Leverich, cashier, 29th.
4. Lucius C. Duncan, esq., personally, 29th.

As regards said banks, service was made at their banking houses.

5. Samuel C. Davis, through Geo. Strawbridge, esq., his attorney, personally on Geo. Strawbridge, esq., 29th.

6. Louisiana State Marine and Fire Insurance Co., personally on McDonald, secretary, 29th.

7. Municipality No. two, personally on Lafonta, clerk of recorder, 29th.

8. New Orleans and Carrollton Railroad Co., personally on J. Nicholson, cashier, 29th.

9. City Bank of New Orleans, personally on R. J. Palfrey, cashier, 29th.

10. The President, Directors, and Company, of the Bank of the United States, through C. Adams, jr., and Frazier, receivers, 29th.

11. Lauve, Brothers, left at counting house with one of the firm, 29th.

(Signed) A. SIDNEY ROBERTSON, *U. S. M.*
By GEO. GAVIN, *D'y U. S. M.*

United States district court, eastern district of Louisiana. Friday, January 6th, 1843.

Present, the honorable T. H. McCaleb.

In the bankruptcy of Thomas Banks, F. B. Conrad, assignee, to sell the whole estate surrendered by the bankrupt.

This being the day fixed for the hearing of the said petition, notice having been published according to the rules of court, and personal notices having been served upon the following mortgage and judgment creditors, as set forth in the petition or schedule annexed to the said assignee's petition, to wit: the Union Bank of Louisiana, the New Orleans Canal and Banking Co., the Bank of Louisiana, Lucius C. Duncan, esq., Samuel B. Davis, esq., through Geo. Strawbridge, his attorney, the Louisiana State Marine and Fire Insurance Company, Municipality No. two, the New Orleans and Carrollton Railroad Company, the City Bank of New Orleans, the President, Directors, and Company of the Bank of the United States, through C. Adams, jr., and W. Frazier, receivers, Lauve, Brotheis; and the following creditors having appeared this day, to wit, Samuel B. Davis, represented by Geo. Strawbridge, esq., L. C. Duncan, in p. p., and presented oppositions to the sale, to the manner and upon the terms proposed by the assignee. Thomas Slidell also appearing, representing C. Adams, jr., and W. Frazier, esq'rs, receivers of the Bank of the United States, and made no opposition to the terms of sale, nor to the erasure and cancelling the mortgages recorded in favor of the said bank; and nine of the other creditors appearing either in person or by attorney, it is ordered, that the assignee be authorized to sell the property, as exhibited upon the schedule annexed to his petition; and the court having considered the oppositions filed by the aforesaid creditors, it is ordered, that the terms of sale, as suggested by the assignee, be so

modified as to meet the said oppositions; that the property mortgaged to said Davis be sold upon the terms proposed by the assignee, reserving to the said mortgage creditor his right to be paid out of the proceeds of the sale, not only the capital due on the mortgage, but also on the interest that has accrued, or may accrue, on the capital until the final settlement and satisfaction of the debt, at the rate of ten per centum per annum. That the property mortgaged to said L. C. Duncan be sold for cash as required by him; that all the rest of the property specified be sold upon the terms suggested by the assignee, to be advertised in the New Orleans Bee and Tropic according to the rules; all moneys and notes received by the said assignee in the sale of said property to be deposited in court, according to the law and the rules, to await the further orders of this court; and in order to convey a title to any purchaser thereof of the property surrendered, it is ordered that the assignee be authorized to cause to be erased and cancelled from the records of the office of mortgages the mortgages recorded in favor of the said creditors, reserving to them all their rights in law to the proceeds of the sale upon the distribution thereof.

(Signed) THEO. H. McCALEB,
*U. S. Judge.*

*From the minutes. January 6th*, 1843.

This being the day fixed for the hearing of the said petition, notice having been published according to the rules of court, and personal notices having been served upon the following mortgage and judgment creditors, as set forth in the petition of said assignee, and the following creditors having appeared this day, to wit, Samuel B. Davis, represented by Geo. Strawbridge, esq., S. C. Duncan, in propria persona, and presented oppositions to the sale, and to the manner and upon the terms proposed by the assignee, the court having heard and considered the the said oppositions, it is ordered, that the property mortgaged to said Davis be sold on the terms proposed by the assignee, reserving to the said mortgage creditor his rights, to be paid out of the proceeds of the sale, not only the capital due on the mortgage, but also on the interest that has accrued or may accrue on the capital, until the final discharge and satisfaction, at the rate of ten per cent. per annum. That the property mortgaged to said S. C. Duncan be sold for cash, as required by him, and to be advertised in the New Orleans Bee and Tropic. Thomas Slidell, esq., of counsel for C. Adams and W. Frazier, also appeared, and made no opposition to the terms of sale proposed by the assignee.

*Extract from the schedule, filed with said assignee's petition to sell.*
*Description of property.*

II. All that space of ground situated in the faubourg St. Mary, in the square comprised between Tchapitoulas, Gravier, Magazine, and Natchez streets, with the improvements thereon, known as Banks' arcade, to be subdivided and sold into such stores and lots, and accord-

ing to such plans as the assignee may judge most conclusive to an advantageous sale, with the concurrence of the mortgage creditors; of which subdivisions, detailed descriptions will be given in the advertisements.

*Terms.*

One-third of the purchase money payable in *cash*, the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit from day of sale; for which each purchaser will furnish his notes payable to his own order, secured by mortgage on the property, and to bear ten per cent. per annum interest, from maturity, if not punctually paid, until paid.

*Order to erase and cancel the mortgages, filed 24th February*, 1843.

United States district court, eastern district of Louisiana. In bankruptcy.

In the bankruptcy of Thomas Banks.

On motion of F. B. Conrad, assignee of Thomas Banks, a bankrupt, on giving the court to be informed that, in pursuance of an order of this honorable court, heretofore rendered, he did cause to be sold by the marshal of the United States the property forming the property surrendered by the said bankrupt to his creditors, known as "Banks' arcade," as follows: and on shewing to the court the within consent and authority of the New Orleans Canal and Banking Company, the first conventional mortgage on said property, to him, assignee, to sell said property, and to cause the mortgages in their favor hereinafter recited to be cancelled, for the purpose of giving titles to the purchasers, reserving their rights to be first paid out of the proceeds; and on further shewing to the court that the application of him, assignee, to sell said property, and to cause to be cancelled, for the purpose of giving titles to the purchasers, the conventional mortgages on said property hereinafter recited, in favor of the New Orleans and Carrollton Railroad Company, and the City Bank of New Orleans, second and third conventional mortgages respectively, has been duly notified to the said New Orleans and Carrollton Railroad Company, and to the said City Bank of New Orleans, and no objection being made to such application, it is ordered, adjudged, and decreed, that the recorder of mortgages of the parish and city of New Orleans, do erase and cancel from his books the said hereinafter recited mortgages on the said property in favor of the said New Orleans Canal and Banking Company, the said New Orleans and Carrollton Railroad Company, and the said City Bank of New Orleans, reserving to said parties respectively their rights upon the proceeds of said property, according to the rank of their said respective mortgages.

*Bank's arcade.*

Seven lots of ground situate in the faubourg St. Mary, in the square comprised between Tchapitoulas, Gravier, Magazine, and

streets, and designated by the numbers twelve, thirteen, sixteen, twenty-four, seventeen, eighteen, and nineteen, and measure as follows:

*No. twelve* measures 22 feet front on Natchez street; 57 feet 6⅕ inches in depth on the boundary line of lot No. 9; 58 feet 7⅘ inches on the boundary line of lot No. 13; and twenty-two feet half an inch in width in the rear line.

*No. thirteen* measures 22 feet front on Natchez street; 58 feet 7⅘ inches in depth on the boundary line of lot No. 12; 59 feet 9⅖ inches on the boundary line of lot No. 16; and 22 feet half an inch in width on the rear line.

*No. sixteen* measures 22 feet front on Natchez street, by 59 feet 9⅖ inches in depth on the boundary line of lot No. 13; 60 feet 11 inches in depth on the boundary line of lot No. 24; and 22 feet half an inch in width on the rear line.

*No. twenty-four* measures 22 feet front on Natchez street, by 60 feet 11 inches in depth on the boundary line of lot No. 16; 62 feet 1⅖ inches on the boundary line of lots No. 16, 17, 18, and 19; and 22 feet half an inch in width on the rear line.

*No. seventeen* measures 22 feet 6 inches front on Magazine street, by 90 feet 9 inches in depth on one of the side lines; 58 feet 8 inches in depth on the other side line; and 20 feet 8⅖ inches in width on the rear line.

*No. nineteen* measures 22 feet 6 inches front on Magazine street, by 84 feet 6 inches in front and depth on Natchez; 86 feet 7 inches in depth on the boundary line of lot No. 18; and 20 feet 8⅘ inches in width on the rear line. All American measure.

II. A certain irregular lot or portion of ground, situated and forming one of the corners of Magazine and Gravier streets, faubourg St. Mary, measuring 91 feet 9 inches front on Magazine street, by 121 feet 6 inches in depth and front on Gravier street, 109 feet 6 inches in depth on the side line which separates it from the property now or formerly to A. Labranche, measuring back from Magazine street, and 79 feet 6 inches in depth on the other side line which separates it from the property owned by the late Caleb D. Jordan, measuring back from Gravier street; American measure.

III. Two certain lots of ground, also situate in the faubourg St. Mary, between Gravier and Poydras streets, and designated by the numbers "three and four," on a plan drawn by Joseph Pilié, city surveyor, on the twentieth May, eighteen hundred and thirty, and deposited in the office of Octave de Armas, a notary public of this city, on the fourteenth February, eighteen hundred and thirty-one.

No. 3 measures 60 feet front on Magazine street, by 150 feet 2 inches in depth on the line separating it from lot No. 4, and 150 feet 6 inches on the other side line; and No. 4 measures 60 feet front on Magazine street, by the same depth on the line separating it from lot No. three, and 147 feet 10 inches in depth on the other side line. All French measure.

List of mortgages on property known as Banks' arcade, taken from

the certificate of the recorder of mortgages, dated 27th September, 1842; said property is described as No. 3 by the mortgage certificate.

B. 27, F. 347, 15th. The one he granted by act passed before W. Christy, notary, dated 3d May, 1834, in favor of the New Orleans Canal and Banking Company, on all the property thirdly hereinabove described and known as the Banks' arcade, to secure the sum of seventy-two thousand five hundred dollars, ($72,500,) on which amount forty-eight thousand dollars ($48,000), is paid.

B. 27, F. 512, 16th. The one he granted by act passed before W. Christy, notary, dated 27th June, 1834, in favor of the New Orleans Canal and Banking , on, 1st, the property thirdly described and known as the Banks' arcade, and the twelve lots of ground herein above thirteenthly described (property on Tchapitoulas and Lafayette streets,) to secure forty thousand dollars ($40,000).

B. 37, F. 43, 22d. The one he granted by act passed before W. Christy, notary, dated 27th April, 1837, in favor of the New Orleans Canal and Banking Company, on the ten lots of ground herein above thirdly described, and known as Banks' arcade, to secure, 1st, twenty-one thousand four hundred and twenty-eight dollars and fifty-eight cents, (21,428 58,) being the balance due to the said company by him, said Banks, under a mortgage which said Banks granted in their favor on his property on Camp and Common streets, known as the City Hotel. And, 2nd, also to secure the sum of fourteen thousand two hundred and sixty-six dollars, ($14,266,) being the balance due to said company by him, the said Banks, under another mortgage which he granted in their favor on the same property.

B. 37, F. 264, 27th. The one he granted by act passed before W. Christy, notary, dated 25th May, 1837, in favor of the New Orleans Carrollton Railroad and Banking Company, on the ten lots of ground, herein above described property, and known as Banks' arcade, to secure four different sums of four thousand dollars, ($4,000,) seven thousand five hundred dollars, ($7,500,) twenty-eight hundred dollars, ($2,800,) and five thousand and four hundred dollars, ($5,400,) making together the sum of twenty-nine thousand and seven hundred dollars, ($29,700;) and also to secure the payment of any further sums for which the said Banks may hereafter become indebted unto the said company for discounts, renewals, endorsements, or otherwise.

II. 37, F. 431, 30th. The one he granted, together with said wife, per act passed before H. B. Cenas, notary, dated 30th June, 1837, in favor of the City Bank of New Orleans, on the said ten lots of ground herein above thirdly described, and known as the Arcade, to secure fifty-five thousand dollars, ($55,000,) payable as per said act.

B. 40, F. 504, 32d. By an act passed before Adolphe Mazureau, notary, dated 18th December, 1838, Thomas Banks promises and binds himself to sell to Louis Schmidt, on the 1st day of December, 1840, the property known as the Bishop's or City Hotel, and also the property known [as the] Banks' arcade, for the total sum of eight hundred and fifty thousand dollars, ($850,000,) agreeably to certain conditions mentioned in said act.

B. 42, F. 559, 33d. The one he granted by act passed before Lucien Herman, notary, dated the 27th day of May, 1840, in favor of the New Orleans and Carrollton Railroad and Banking Company, on the ten lots of ground herein above thirdly described, and known as the Banks' arcade, to secure the sum of thirty-three thousand five hundred and fifteen dollars and eight cents, ($33,515 08,) payable as per said act.

*Petition of the Canal Bank.*

On the application of the New Orleans Canal and Banking Company to be the proceeds of property mortgaged. Filed 23d June, 1843.

To the honorable the judge of the district court of the United States for the eastern district of Louisiana, sitting in bankruptcy.

The petition of the New Orleans Canal and Banking Company, a corporation established by law, of the State of Louisiana, respectfully shews:

That your petitioner is a creditor of Thomas Banks, a bankrupt, by special mortgage on the property hereinafter mentioned, in the sum of one hundred and two thousand one hundred and ninty-four dollars and twenty-eight cents, with interest, on the sum of $24,500, at the rate of eight per cent. per annum, from the 4th August, 1839, until paid; on the sum of $40,000, at the same rate, from the 2d February, 1839, until paid; on the sum of $21,426 58, at the same rate, from 1st July, 1832, until paid; on the sum of $1,142 88, at the same rate, from 5th July, 1838, until paid; and on $886, at the same rate, from 2d August, 1838, until paid. That said debt is secured by mortgage on certain property situated in the city of New Orleans.

Being, first, seven lots of ground in the square bounded by Tchapitoulas, Gravier, Magazine, and Poydras streets, and designated by the numbers twelve, thirteen, sixteen, twenty-four, seventeen, eighteen, and nineteen, and measure as follows, viz:

No. twelve measures twenty-two feet front on Natchez street; fifty-seven feet six inches and one fifth in length on the boundary line of lot No. 9; fifty-eight feet seven inches and four-fifths on the boundary line of lot No. 13, and twenty-two feet and half an inch in width on the rear line.

No. 13 measures twenty-two feet front on Natchez street; fifty-eight feet seven inches and four-fifths in length on the boundary line of lot No. 12; fifty-nine feet nine inches and two-fifths on the boundary line of lot No. 18, and twenty-two feet and half an inch in width on the rear line.

No. 24 measures twenty-two feet front on Natchez street, by sixty feet eleven inches in depth on the boundary line of lot No. 16; sixty-two feet one inch and two-fifths on the boundary lines of lots Nos. 17, 18, and 19, and twenty-two feet and half an inch in width on the rear line.

No. 17 measures twenty-two feet six inches front on Magazine street, by ninety feet nine inches in depth on one of the side lines; eighty-

eight feet eight inches in depth on the boundary line of lot No. 17; eighty-six feet seven inches in depth on the boundary line of lot No. 19, and twenty feet eight inches and two-fifths in width on the rear line.

And No. 19 measures twenty-two feet six inches front on Magazine street, by eighty-four feet six inches in front and depth on Natchez street; eighty-six feet seven inches in depth on the boundary line of lot No. 18, and twenty feet eight inches and two-fifths in width on the rear line. (All American measure.) Which property was purchased by the said Banks from M. Morgan, by an act passed before Louis T. Caire, a notary public in this city, on the twenty-sixth May, eighteen hundred and thirty-one.

*Second.*—A certain irregular lot or portion of ground, situate at and forming one of the corners of Magazine and Gravier streets, faubourg St. Mary, measuring ninety-one feet nine inches front on Magazine street, by one hundred and twenty-six feet six inches in depth and front on Gravier street, one hundred and nine feet six inches in depth on the side line which separates it from the property now or lately belonging to A. La Branche, and seventy-nine feet six inches in depth on the other side line which separates it from the property owned by the late Caleb D. Jordan, measuring back from Gravier street, (American measure.) Which property was purchased by the said Banks from Mrs. C. B. Wray, by an act passed in this office on the first March, eighteen hundred and thirty-three.

*Third.*—Two certain lots of ground, also situate in the faubourg St. Mary, between Gravier and Poydras streets, designated by the numbers three and four on a plan drawn by Joseph Pilié, city surveyor, on the twentieth May, eighteen hundred and thirty, and deposited in the office of Octave de Armas, a notary public in this city, on the fourteenth of February, eighteen hundred and thirty-one.

No. 3 measures sixty feet front on Magazine street, by one hundred and fifty feet two inches in depth on the line separating it from lot No. 4, and one hundred and fifty feet six inches in depth on the other side line.

And No. 4 measures sixty feet front on Magazine street, by the said depth on the line separating it from lot No. 3, and one hundred and forty-nine feet ten inches in depth on the other side line. (All French measure.) Which said two lots were purchased by the said Thomas Banks from Lucien G. Heligsburg, by an act passed before G. R. Stringer, late a notary in this city, on the eighth day of February, eighteen hundred and thirty-three.

The said property forming the entire front on Magazine street, between Gravier and Natchez streets, and known as the "Arcade;" all of which will more fully appear by reference to duly certified copies of three certain acts of mortgage, passed before William Christy, notary public, one on the 27th June, 1834, and the other on the 3rd May, 1834, before same notary, and the third on the 27th April, 1837, before same notary; which said acts are annexed for reference.

Your petitioner further shews, that on the fourth day of June, eighteen hundred and forty-two, they did obtain a judgment against said Thomas Banks, in the parish court of the parish and city of New for said sum of $102,194 28, with interest as above mentioned, together with nineteen dollars costs of protest and notarial copies, and costs of suit, and decreeing that they had a mortgage on all said property known as the "Arcade," for the security and payment of their debt, a certified copy whereof is hereto annexed for reference.

Your petitioner further shews, that said Thomas Banks surrendered said property to his creditors in this honorable court; that Francis B. Conrad, of said city, was duly appointed assignee by this court, and as such has, by virtue of and in obedience to the order of this honorable court heretofore rendered, caused said property to be sold, and has received the cash and notes arising from said sale. That your petitioners, being much in need of their said debt, have called upon said assignee to pay over to them, they being [willing] to take the notes of the purchasers, and to credit their said debt against said Thomas Banks with the amount thereof, as so much received in cash from said assignee, less the amount of his commissions of administration, and whatever other sum they may be requested to contribute towards the costs and expenses of the bankruptcy; but that said assignee has declined doing so without an order from this honorable court to that effect.

Wherefore, your petitioners pray that said F. B. Conrad, assignee aforesaid, may be cited to answer this petition, and to shew cause (if any he has) why the proceeds of the sale of the above described property, known as "Banks' arcade," should not be paid over to your petitioner as the mortgagees on said property, and as entitled to the same by reason of their said mortgage.

Your petitioners further pray that due notice of this application be given according to law, to the end that the said bankrupt and his creditors, and all others who may be concerned or interested in the premises, shew cause why the prayer of the petitioner should not be granted.

(Signed) JAMES F. JONES, *Att'y for plaintiffs.*

*Answer of F. B. Conrad, assignee, on the foregoing petition. Filed 23rd June*, 1843.

In the bankruptcy of Thomas Banks; F. B. Conrad, assignee. Answer.

To the hon. the district court of the United States for the eastern district of Louisiana. The answer of F. B. Conrad, assignee of Thomas Banks, a bankrupt, to the petition of the New Orleans Canal and Banking Co., to be paid the proceeds of certain property sold by him, belonging to the estate of the said bankrupt, and known as "Banks' arcade."

Respectfully shews, that your respondent admits that the property mentioned in said petition has been sold, and the proceeds received by him; and he avers that he is ready and willing to pay the same over to the petitioners on the judgment of the honorable court to that effect,

after deducting the amount necessary to pay the commissions, and the other privileged costs and expenses which said petitioners may be required to contribute. Wherefore respondent submits that due notice of the said petition may be given according to law and the rules of this honorable court, and that, after all due proceedings, such judgment be rendered in the premises as the nature of the case may require; and as in duty, &c.

(Signed) F. B. CONRAD, *Assignee.*

*Order of court thereon.*

UNITED STATES DISTRICT COURT, *eastern district of Louisiana:*

On this 23d day of June, 1843, upon reading the petition aforesaid, it is ordered by the court, that due notice thereof be published in a newspaper printed in the district ten days at least before the time assigned for the hearing: that a hearing of the said petitioner will be had on Thursday, the sixth day of July, one thousand eight hundred and forty-three, at 10 o'clock, A. M., when and where all creditors, the bankrupt, and other persons in interest, may appear and shew cause, if any they have, why the prayer of the said petitioner should not be granted.

(Signed) JAMES R. JENNINGS,
*Dy. clerk of the court.*

*From the minutes.*

In the bankruptcy of Thomas Banks; F. B. Conrad, assignee. Petition of the Canal Bank, June 23d, 1843.

Present, the hon. T. H. McCaleb.

Upon reading the petition filed by the Canal Bank, praying that F. B. Conrad, assignee, be authorized to pay over in cash and notes the proceeds of the sale of certain property to the said bank to the amount of one hundred and two thousand one hundred and ninety-six $\frac{18}{100}$ dollars, with interest specified in said petition, which property is particularly set forth in the petition filed by the said bank, and known in the city as Banks' arcade, upon which a special mortgage has been executed in favor of said bank, it is ordered by the court that a hearing of the said petition shall be had on Thursday, July sixth, eighteen hundred and forty-three, at which time the creditors of the bankrupt, and all others interested, may appear and shew cause why the said assignee should not be authorized to pay over the proceeds of the said property to said Canal Bank, in the manner and form as set forth in their petition. And it is further ordered that publication of the same be made in the Bulletin and Tropic according to law and the rules of the court.

*Order of court granting said petition.*

In the bankruptcy of Thomas Banks; F. B. Conrad, assignee. Petition of the Canal Bank, to be paid her special mortgage, July 6th, 1843.

Present, the hon. T. H. McCaleb.

This being the day fixed for the hearing of the petition filed in the bankruptcy by the New Orleans Canal and Banking Company, praying that

the assignee of the bankrupt may be authorized to pay over to the said company the proceeds of certain property surrendered by the said bankrupt to his creditors, situated in the square comprised between Gravier, Natchez, Magazine, and Tchapitoulas streets, in the city of New Orleans, and known as Banks' arcade, and which was sold by said assignee; and the facts set forth in the said petition having been duly established to the satisfaction of the court, and it appearing from inspection of the several acts of mortgage, and the judgment of the parish court of the city and parish of New Orleans, that the petitioners have special mortgage of the first rank on the property described, and for the amount stated in said petition, and the advertisement and public notice required by law having been made by the said petition, and no opposition having been made thereto, it is now ordered, adjudged, and decreed, that F. B. Conrad, assignee of Thomas Banks, a bankrupt, do pay over to the said New Orleans Canal and Banking Company the proceeds in money and notes by him received from the sales of said property, less the amount of said assignee's commissions, and two and a half per cent. on the amount of said sale; and such other amounts, if any, which may be necessary to be contracted by said company to defray the privileged costs of said bankruptcy.

In the bankruptcy of Thomas Banks, January 5th, 1845.

Present, the hon. T. H. McCaleb.

On motion of F. B. Conrad, assignee of the bankrupt, it is ordered by the court that this estate be referred to the board of commissioners, for the purpose of examining and reporting to the court on the reports of said assignee on file, shewing his administration as assignee of said estate up to the present time.

In the bankruptcy of Thomas Banks, January 5th, 1844.

Present, the hon. T. H. McCaleb.

Upon motion of F. B. Conrad, assignee of the estate of Thomas Banks, and shewing to the court the several reports filed by him as assignee, it is ordered, that in conformity with the rules of court heretofore made, notice be given that the said estate, according to the reports of the assignee, will be referred on the eighteenth instant to the board of commissioners to make a report thereon previous to the order of distribution, and all creditors who have not proved their debts according to law are notified to do so before the papers and proceedings shall be thus referred. Publication to be made in the Picayune and Tropic, three insertions each in ten days, and two advertisements in the Bulletin.

United States district court, sitting in bankruptcy, in and for the eastern district of Louisiana.

In the matter of Thomas Banks. Hearing of the report of the board of commissioners. No. 353.

The creditors who have proved their debts in this estate are hereby notified that the commissioners' report is fixed for trial on Thursday,

eighteenth day of April, A. D. one thousand eight hundred and forty-four, at 10 o'clock, A. M., and to appear and shew cause in writing, on or before that day, why the report should not be approved, and the funds distributed in conformity thereto. By order of the court.

Witness my hand, and the seal of the court, this eighth day of April, A. D. eighteen hundred and forty-four, and of the independence of the United States the sixty-eighth year.

(Signed) N. R. JENNINGS, *Clerk.*

*Marshal's return.*

Received and served in the following manner, to wit:

1. H. C. Chinn, by R. H. Chinn, esq., left at his office.
2. W. W. Frazier and C. Adams, jun'r, personally on C. Adams.
3. Atchafalaya Bank, personally on B. F. French.
4. F. Gillet, collector of State taxes, personally.
5. Gas Bank, personally on cashier.
6. E. Wilts, collector, personally.
7. Carrollton Bank, personally on cashier.
8. The bank of Mobile, by Wm. L. Hodge, personally.
9. John Davidson was not found.
10. James H. Dakin, personally.
11. Parish of Orleans, on Judge Maurien.
12. Commercial Bank, on cash'r in person.
13. Hill and Relf, left personally.
14. Municipality No. one, on W. Frost in person.
15. W. A. Holt, left.
16. Municipality No. two, on E. Rawle, attorney.
17. Samuel I. Peters, personally.
18. Geo. Strawbridge, personally.
19. G. C. Duncan, left at domicil.
20. H. Lockett, for Mississippi Marine and Fire Insurance Company, personally.
21. State of Louisiana, on treasurer.
22. Union Bank of Louisiana, on cashier, personally.
23. Bank of Louisiana, on cashier in person.

(Signed) WM. R. STILES, *Dy. U. S. M.*

Extract from the report of the board of commissioners in the bankruptcy of Thomas Banks, relative to the property sold by the assignee of said estate, and known as Banks' arcade.

*Real estate.*

The block of three story brick buildings, forming the entire front on Magazine street, between Gravier and Natchez streets, near block known as the Arcade Exchange, valued at $350,000.

*Reccipts.*—Statement of rents received, Banks' Arcade.
The following sums have been received for rent of this property.

| | | | |
|---|---|---|---|
| 1842. | | | |
| Novem'r | 8 | From Louis Luon, jr., No. 56, Magazine, for 6 months - | $240 |
| December | 1 | L. Kling, for upper part No. 22, N. street, for Nov. - | 41 66 |
| | " | P. Gerger, for lower part No. 54, Magazine - | 25 |
| | " | Frenchholts, for lower part No. 20, Natchez " - | 18 |
| | " | Frierson, Dale & Co., upper part No. 45, Mag. " - | 41 66 |
| | " | E. E. Aaron, for lower part No. 56, Mag. " - | 83 33 |
| | " | X. Lambert, 1 82, 5 of 62, Magazine - " - | 100 |
| | " | Thomas N. Morgan, lower part 8, Arcade " - | 33 33 |
| | " | Asa Allen, lower part 57, Gravier - " - | 83 33 |
| | " | M. D. Cooper & Co., upper part 54, Magazine " - | 30 |
| | " | P. P. Rhea, whole corner, Gravier - " - | 166 66 |
| | " | J. A. Beard, lower part 45, Magazine - " - | 75 |
| | " | Do. do. 7, Arcade - " - | 16 |
| | 7 | J. M. Cabalero, lower part 44, Magazine " - | 70 |
| | " | Keaher, lower part 22, Natchez - - " - | 12 |
| | " | N. Warren, lower part 22, No. 1, Natchez " - | 25 |
| | 10 | C. M. Randall, upper part 37, Gravier - " - | 25 |
| | 24 | Mrs. Bonney, upper part 18, Natchez - " - | 35 |
| | " | G. Stetzback, lower part 18, Natchez - " - | 16 20 |
| 1843. | | | |
| January | 1 | M. Kling, for December, lower - - - | 41 66 |
| | " | D. Greiger do. do. - - - | 25 |
| | " | J. Frechholts do. do. - - - | 18 |
| | " | Frierson, Dale & Co. do. do. - - - | 41 56 |
| | " | E. E. Aaron do. do. - - - | 83 33 |
| | " | X. Lambert do. do. - - - | 100 |
| | " | T. N. Morgan do. do. - - - | 33 33 |
| | " | M. D. Cooper & Co. do. do. - - - | 30 |
| | " | P. P. Rea do. do. - - - | 166 66 |
| | " | Jos. A. Beard do. do. - - - | 91 66 |
| | 10 | C. M. Randall do. do. - - - | 23 |
| | 19 | G. Stebzback do. do. - - - | 16 20 |
| | " | Mrs. Barry do. do. - - - | 25 |
| | " | N. Warren do. do. - - - | 20 |
| February | 1 | M. Fling, January do. - - - | 41 66 |
| | " | P. Greiger do. do. - - - | 25 |
| | " | F. Freescholtz do. do. - - - | 18 |
| | " | Frierson, Dale & Co. do. do. - - - | 41 66 |
| | " | E. E. Aaron do. do. - - - | 83 33 |
| | " | X. Lambert do. do. - - - | 100 |
| | " | T. N. Morgan do. do. - - - | 33 33 |
| | " | M. D. Cooper & Co. do. do. - - - | 30 |
| | " | P. P. Rea do. do. - - - | 166 66 |
| | " | Jos. A. Beard do. do. - - - | 91 66 |
| | " | Mrs. Barney do. do. - - - | 35 |
| | " | Newton, Whittaker & Co., for up. pt. 56 Mag. for - - | 30 |
| | " | Asa Allen, as above do. - - - | 83 33 |
| | 2 | J. M. Cabalero do. December - - - | 133 |
| | 10 | C. M. Randall do. do. - - - | 25 |
| | 28 | G. Stilzback do. do. - - - | 16 20 |
| March | 1 | M. Kling do. February - - - | 41 66 |
| | " | P. Greiger, upper part do. - - - | 25 |
| | " | F. Freinscholtz do. do. - - - | 18 |
| | " | Frierson, Dale & Co. do. do. - - - | 41 66 |
| | " | E. E. Aaron do. do. - - - | 83 33 |
| | " | X. Lambert do. do. - - - | 100 |
| | " | T. N. Morgan do. do. - - - | 33 33 |
| | " | M. D. Cooper & Co. do. do. - - - | 30 |
| | " | P. P. Rea do. do. - - - | 166 66 |
| | " | Jos. A. Beard do. do. - - - | 91 66 |

*Receipts.—Continued.*

| | | | | | |
|---|---|---|---|---|---|
| 1843, Mar. | 1 | From Newton, W. & Co. | for | February - - - | $30 |
| | " | Asa Allen - | do. | do. - - - | 83 |
| | 3 | Mrs. Barney - | do. | do. - - - | 35 |
| | 6 | G. Stiltzback - | do. | do. - - - | 16 |
| | " | J. W. Caballero | do. | do. - - - | 63 |
| | 10 | C. M. Randall - | do. | do. - - - | 25 |
| | " | Kraker - | do. | Dec., Jan., Feb., - - | 32 40 |
| April | 1 | M. Kling - | do. | March - - - | 41 66 |
| | " | P. Greiger - | do. | do. - - - | 25 |
| | " | F. Frieshholts - | do. | do. - - - | 18 |
| | " | Frierson, Dale & Co. | do. | do. - - - | 41 66 |
| | " | E. E. Aaron - | do. | do. - - - | 83 33 |
| | " | X. Lambert - | do. | do. - - - | 100 |
| | " | T. N. Morgan - | do. | do. - - - | 33 33 |
| | " | M. D. Cooper & Co. | do. | do. - - - | 30 |
| | " | P. P. Rea - | do. | do. - - - | 166 66 |
| | " | Jos. A Beard - | do. | do. - - - | 91 66 |
| | " | Newton, N. & Co. | do. | do. - - - | 30 |
| | " | Asa Allen, | upper part | do. - - - | 83 33 |
| | " | Mrs. Barney - | do. | do. - - - | 35 |
| | 10 | C. M. Randall - | do. | do. - - - | 25 |
| | 16 | J. M. Caballero | do. | do. - - - | 63 |
| | | *Banks' Arcade.* | | | $4,603 02 |
| June | 17 | From N. Manon, on ac. rent in Natchez street - | | $15 00 | |
| | | G. Stebzback, for March - - - | | 16 20 | |
| | | *Rent notes.* | | | 31 20 |

List of notes received by the assignee from the tenants and delivered to the purchasers of the following properties, agreeably to the conditions of the sale.

*Banks' Arcade.*

| | | | | | |
|---|---|---|---|---|---|
| To John Freeland | 7 | notes of J. A. Beard each - - - | $16⅔ | $116 66⅔ | 116 66⅔ |
| | 7 | " P. P. Rea | 166⅓ | 1,166 66⅔ | 1,666 66⅔ |
| | 7 | " Asa Allen | 83⅓ | 583 33⅓ | 583 33⅓ |
| | 7 | " C.M.Randall | 25 | 175 | 175 |
| Mark Davis | 7 | " J. A. Beard - | | $75 | 525 |
| | 7 | " Frierson, Dale & Co. | | 41⅓ | 219 66⅔ |
| Wm. Houston | 7 | " P. Greiger - | | 25 | 175 |
| | 7 | " M. D. Cooper & Co. | | 30 | 210 |
| J. G. Bernard | 7 | " E. E. Aaron - | | 83⅓ | 583 33⅓ |
| | 7 | " Newton & Co. - | | 30 | 210 |
| F. M. Fisk | 7 | " Kraker - | | 12 | 84 |
| Tho. M. Doyle | 7 | " F. Friescholtz - | | 41⅔ | 291 66⅔ |
| | 7 | " Kling - - | | 18 | 126 |
| X. Lambert | 7 | " Lambert - | | 100 | 700 |
| F. H. Hatch | 7 | " Mrs. Barney - | | 35 | 245 |
| | | | | | 5,716 66⅔ |

To the following persons the rent notes of the property, known as Banks' Arcade, purchased by them agreeably to the terms of sale.

| | | | |
|---|---|---|---|
| 1st | To John Freeland - - - - | 2,041 66⅔ | |
| 2d | Mark Davis - - - - | 816 66⅔ | |
| 3d | William Houston - - - - | 385 | |
| 4th | J. G. Bernard - - - - | 793 33 | |
| 5th | J. M. Fisk - - - - | 317 33⅓ | |
| 6th | Thomas M. Doyle - - - - | 417 66⅔ | |
| 7th | X. Lambert - - - - | 700 | |
| 8th | F. H. Hatch - - - - | 245 | |
| | | | 5,716 66⅔ |

In the bankruptcy of Thomas Banks. In bankruptcy. *In bankruptcy.*

UNITED STATES DISTRICT COURT, *eastern district of Louisiana.*

Present, the honorable T. H. McCaleb.

*5th March*, 1844.

On motion of H. Kennicott, esq., of counsel for S. J. Peters, and it appearing to the court that an order of this court was made on the eleventh May, eighteen hundred and forty-three, in favor of said Peters, for the proceeds of the mortgage property, or so much as should satisfy his claim, and that the proceeds aforesaid have been deposited in court, it is ordered that the clerk of the county be authorized to carry such order into execution, by paying to said Kennicott the sum of one hundred and eighty-seven $\frac{50}{100}$ dollars in cash, and a note of J. B. Marks, for one hundred and twelve $\frac{50}{100}$ dollars, deposited in court.

(Signed) THEO. H. McCALEB, *U. S. Judge.*

In the bankruptcy of Thomas Banks. Filed 5th January, 1844.

Present, the honorable T. H. McCaleb.

On motion of F. B. Conrad, assignee of the bankrupt, it is ordered by the court, that this estate be referred to the board of commissioners, for the purpose of examining and reporting to the court on the reports of said assignee on file, showing his administration as assignee of said estate up to the present time.

A true extract from the minutes.

*Extract from the report of board of commissioners, proved under the commission, filed 12th March*, 1844.

| Creditors. | Residence. | Nature of debt. | Amount. |
|---|---|---|---|
| Commercial Bank, | N. O. | Loan on pledge of stock | $37,200 00 |
| City Bank, - | N. O. | Loans on mortgage and pledge of stock with interest - - | 63,250 00 |

*Distribution of the assets.*—Distribution.

1st. To the New Orleans Canal and Banking Company the proceeds of the following property, in which they have the first mortgage, to wit:

1st. On the property known as "Banks' Arcade," situated on Magazine street, between Gravier and Natchez streets, consisting of twenty-one lots of ground, with the stores thereon:

| | | |
|---|---|---|
| In cash - - - | $41,216 69 | |
| In notes - - - | 82,433 31 | |
| | | 123,650 00 |
| 2nd. The twenty-nine lots of ground on the canal on New Basin, in cash - - - - - | | 6,031 29 |
| | | $129,681 29 |

*In the bankruptcy of Thomas Banks, in bankruptcy.*

(Copy of advertisement.) In bankruptcy, United States district court, January 6th, 1844.

On motion of F. B. Conrad, assignee of the estate of Thomas Banks, and shewing to the court the several reports filed by him as assignee, it is ordered, that in conformity with the rules of court heretofore made, notice be that the said estate, according to the reports of the assignee, will be referred on the eighteenth instant to the board of commissioners to make a report thereon previous to the order of distribution, and all creditors who have not proved their debts according to law to be placed upon the tableau of distribution, are notified to do so before the papers and proceedings shall be thus referred.

(Signed) N. R. JENNINGS, *Clerk.*

Published in the Tropic, Picayune, and Republican.

*Order for the homologation.*

In bankruptcy, United States district court.

Report of the board of commissioners in the bankruptcy of Thomas Banks. No. 353.

The court having referred the proceedings in the estate of the bankrupt, Thomas Banks, to the board of commissioners, to make a report thereon, anterior to the order of distribution of the assets among the creditors who have proved their debts prior to said reference, and having made their report in conformity to the order of court, it is now ordered, that the hearing of the said report of the said estate, as above entitled, be had on Thursday, eighteenth day of April, eighteen hundred and forty-four, at 10 o'clock, A. M, where all creditors who have proved their debts, the bankrupt, and all persons interested, may appear, and shew cause, if any they have, why the said report should not be approved and homologated by the court, and the funds distributed in conformity thereto; all objections and oppositions to the said report to be filed in writing on or before the said day of hearing.

By order of the court.

(Signed,) N. R. JENNINGS,
*Clerk of the U. S. Dist. court.*

Published in the Picayune, Bee, Republican, and Tropic.

*In the bankruptcy of Thomas Banks; homologation of the report of the board of commissioners.*

UNITED STATES DISTRICT COURT, *eastern district of Louisiana.*

THURSDAY, 18*th April*, 1844.

Present, the honorable T. H. McCaleb.

This being the day fixed for the hearing of the homologation of the report of the board of commissioners in the above entitled estate, upon the motion of D. N. Hennen, esq., U. States commissioner, and on shewing to the court that publication has been duly made in four of the

newspapers of this city, to wit, the Picayune, Bee, Republican, and Tropic, and personal notices served upon all creditors who have proved their debts according to law and the rules of this court, and that an opposition has been made by E. Rawle, esq., representing Municipality No. two, that said Municipality have duly filed their proof of debt for the sum [of] two thousand eight hundred and five dollars and twenty cents, on which they claim a privilege; it is therefore ordered and decreed, that the said commissioners' report in the above entitled estate be approved and homologated, so far as not opposed, and payment be made in conformity thereto, so far as they do not interfere with the rights of the opposing creditors.

(Signed,) THEO. H. McCALEB,
*U. S. D. judge.*

I, N. R. Jennings, clerk of the United States district court in and for the district of Louisiana, do hereby certify, that the foregoing forty-four pages, in the bankruptcy of Thomas Banks, contain true and faithful extracts from the original on file and of record in this court.

In testimony whereof I have hereunto set my hand and caused the seal of the said court to be affixed, at the city of New Orleans, this twenty-fifth day of April, A. D. one thousand eight hundred and forty-five, and of the independence of the United States of America the sixty-ninth year.

[SEAL.]

(Signed,) N. R. JENNINGS, *Clerk.*

*Document S.*

*Order of sale, &c., in bankruptcy, filed in evidence, 26th April,* 1845.

United States. In bankruptcy. Petition of assignee to sell estate of bankrupt.

To the honorable the judge of the United States district court for the eastern district of Louisiana.

Respectfully shows, Francis B. Conrad, of New Orleans, assignee of the estate of Thomas Banks, declared by this court as a bankrupt, that the said Thomas Banks, at the time of his bankruptcy, was seized and possessed of the estate and property in the schedule hereto annexed, marked A, specially set forth; that it will be for the benefit of the said estate, and of all parties having interest therein, that the same should be sold, transferred, and assigned. Wherefore, the petitioner prays the court to pass an order for that purpose according to the provisions of the act of Congress.

(Signed,) F. B. CONRAD, *Assignee.*

United States district court for the eastern district of Louisiana.

On this twenty-third day of December, eighteen hundred and forty-two, upon reading the petition aforesaid, it is ordered by the court that due notice thereof be published in two newspapers, printed in the district, ten days at least before the time assigned for the hearing; that a hearing of the said petitioner will be had on Friday, the 6th of January,

at 10 o'clock, A. M., when and where all the creditors, the bankrupt, and other persons in interest, may appear and show cause, if any they have, why the prayer of the said petitioner should not be granted.

(Signed,) N. R. JENNINGS, *Clerk.*

*Schedule A.—Description of property.*

I. All that space of ground, with the buildings and improvements thereon, situated in the square comprised between Canal, Camp, Common, and Magazine streets, and fronting on Camp and Common streets, known as the City Hotel.

Said property to be subdivided and sold into such lots, and according to such plans, as the assignee may see proper for the purpose of insuring advantageous sales, with the concurrence of the mortgage creditors, the Union Bank of Louisiana, of which subdivisions detailed descriptions will be given in the advertisements; together with nine hundred and forty-two shares of the capital stock of the Union Bank of Louisiana, to be apportioned on the different lots as already agreed upon between said Bank of Louisiana and the assignee.

*Terms.*

One-fourth of the purchase money payable cash, and the remainder, the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan on the stock to the amount of twenty-five dollars per share, renewable according to the charter of the bank, and the balance of the price payable at six, twelve, eighteen, and twenty-four months from day of sale, in notes drawn by the purchaser to his own order, and secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

II. All that space of ground situated in the faubourg St. Mary, in the square comprised between Tchapitoulas, Gravier, Magazine, and Natchez streets, with the improvements thereon, known as "Banks arcade," to be subdivided and sold into such stores and lots, and according to such plans, as the assignee may judge most conducive to an advantageous sale, with the concurrence of the mortgage creditors, of which subdivisions detailed descriptions will be given in the advertisements.

*Terms.*

One-third of the purchase money payable in cash, the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit from day of sale, for which each purchaser will furnish his notes, payable to his own order, secured by mortgage on the property, and to bear ten per cent. per annum interest from maturity, if not punctually paid, until paid.

III. Four lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square comprised between Tchapitoulas, Gravier, Magazine, and Natchez streets, and designated by Nos. one, two, three, and four, on a plan drawn by James

H. Dakin, dated fifteenth December, eighteen hundred and forty-two, to be exhibited on the day of sale, and measure in English measure as follows:

Lot No. 1 measures sixty-three feet eleven inches and two lines front on Tchapitoulas street, by one hundred and fifty-nine feet seven inches and four lines deep on the line which separates it from the property now or lately belonging to Mr. Morgan, and one hundred and sixty feet four inches and eight lines deep on an irregular line separating it from lot No. 2, and sixty-three feet eleven inches and two lines in width in the rear; the six-story brick edifice, together with all the buildings and improvements thereon, known as the National Hotel, together with four hundred and fifty shares of stock of the capital stock of the Union Bank of Louisiana.

Lot No. 2 adjoins the above mentioned lot, and measures thirty-one feet eleven inches and seven lines front on Tchapitoulas street, by a depth of one hundred and sixty feet eight inches and ten lines on the line which separates it from lot No. 3, of one hundred and sixty feet four inches and eight lines on an irregular line which separates it from lot No. 1, and thirty-one feet eleven inches and seven lines in width at the rear; together with the two-story brick dwellings, and brick back buildings thereon, and together one hundred and fifty shares of the capital stock of the Union Bank of Louisiana.

Lot No. 3 adjoins the above mentioned lot, and measures thirty-one feet eleven inches and seven lines front on Tchapitoulas street, by one hundred and sixty feet eight inches and ten lines deep on the line separating it from lot No. 2, and one hundred and sixty-one feet one inch and five lines deep on the other side line, and thirty-one feet eleven inches and seven lines in the rear; together with the two story brick house, and brick back building thereon; together with one hundred and fifty shares of the capital stock of the Union Bank of Louisiana.

Lot No. 4 adjoins the above, and measures twenty-one feet eight inches front on Tchapitoulas street, running back on the line dividing it from lot No. 3 one hundred and one feet ten inches; thence on the rear line next Magazine street seventy feet; thence front on Gravier street four feet, being the width of an open alley leading from the yard of the premises into Gravier street; thence, on the line opposite the line next to Magazine street, forty-eight feet six inches; and thence ninety-three feet nine inches to meet the front on Tchapitoulas street; together with the four-story brick dwelling house and back buildings thereon, and together with one hundred and fifty-two shares of the capital stock of the Union Bank of Louisiana.

*Terms.*

One-fourth of the purchase money payable cash, and for the remainder the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan on the stock to the amount of twenty-five dollars per share, renewable according to the charter of the bank; and the balance of the price payable at six, twelve, eighteen,

and twenty-four months from day of sale, in notes drawn by the purchaser to his own order, and secured by mortgage on the property, and bearing ten per cent. per annum interest, if not punctually paid, until final payment.

IV. Four lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square comprised between Poydras, Lafayette, Tchapitoulas, and Commerce streets, and designated by the Nos. one, two, three, and four, on a plan drawn by J. H. Dakin, dated fifteenth December, eighteen hundred and forty-two, to be exhibited on the day of sale, and measure in English measure as follows:

Lot No. 1 measures twenty-one feet eleven inches and one line front on Tchapitoulas street, by a depth of seventy-nine feet six inches on the side line nearest to Lafayette street, and of seventy-nine feet nine inches on the opposite side line next to lot No. 2, and twenty-one feet eleven inches and one line in the rear; together with the three-story brick store thereon, and together with sixty shares of the capital stock of the Union Bank of Louisiana.

Lot No. 2 adjoins the above, and has a front of twenty-one feet eleven inches and one line on Tchapitoulas street, by a depth of seventy-nine feet nine inches on the line separating it from lot No. 1, and of eighty feet on the line separating it from lot No. 3, and twenty-one feet eleven inches and one line in the rear; together with the three-story brick store thereon, and together with 6 shares of the capital stock of the Bank of Louisiana.

Lot No. 3 adjoins the above, and measures twenty-one feet eleven inches and one line front on Tchapitoulas street, by a depth of eighty feet on the line separating it from lot No. 2, and of 80 feet three inches on the opposite side line nearest to Poydras street, and twenty-one feet eleven inches and one line in the rear; together with the three-story brick store thereon, and together with sixty shares of the capital stock of the Union Bank of Louisiana.

Lot No. 4 measures sixty-six feet ten and a quarter inches front on Commerce street, by a depth of eighty-seven feet on the line nearest to Lafayette street, and of seventy-six feet eleven and one-half inches on the opposite side line nearest to Poydras street, and sixty-five feet nine inches three lines in the rear; together with seventy shares of the capital stock on the Union Bank of Louisiana.

*Terms*. One-fourth of the purchase money payable cash, and for the remainder the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan on the stock, to the amount of twenty-five dollars per share, receivable according to the charter of the bank; and the balance of the price payable at six, twelve, eighteen, and twenty-four months from day of sale, in notes drawn by the purchaser to his own order, and secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

V. Five lots of ground, with the buildings and improvements there-

on, situated in the suburb St. Mary, in the square comprised between New Levee, Girod, Commerce, and Notre Dame streets, and designated by the Nos. one, two, three, four, and five, on a plan drawn by J. H. Dakin, dated fifteenth December, eighteen hundred and forty-two, to be exhibited on the day of sale; said lots adjoin one another, and measure in English measure as follows:

Lot No. 1 forms the corner of New Levee and Girod streets, and measures one hundred and two feet front on New Levee, by one hundred and six feet seven inches in depth and front on Girod street; one hundred and two feet seven inches in depth on the line separating it from No. two, and one hundred and thirty feet nine inches in the rear; together with the buildings and improvements thereon, known as the "Commercial Hotel."

Lot No. two measures twenty-seven feet three and a half inches front on New Levee street, by a depth between parallel lines of one hundred and two feet seven inches, and twenty-seven feet three inches wide in the rear; together with the two-story brick store, dwelling, and kitchen thereon.

Lot No. three measures twenty-seven feet three inches front on New Levee street, by one hundred and two feet seven inches in depth between parallel lines, and twenty-seven feet three and a half inches in width in the rear; together with the two-story brick store and dwelling and back building thereon.

Lot No. four has a front of forty feet three inches on New Levee street, by a depth of one hundred and two feet seven inches on the line dividing it from lot number three, and of one hundred and four feet two inches on the opposite line, running irregularly, and twenty-five feet ten inches in width in the rear; together with the two-story brick store and dwelling and back buildings thereon.

Lot No. five forms the corner of New Levee and Notre Dame streets, and has a front on New Levee street of forty feet eight and a half inches, by one hundred and six feet seven inches deep and front on Notre Dame street, one hundred and four feet and two inches deep on the opposite line, running irregularly, and twenty-six feet four and a half inches in width in the rear; together with the two-story brick store and dwelling and back buildings thereon.

*Terms.* One-fourth of the purchase money payable in cash, and the balance in equal instalments at one, two, three, four, and five years credit from day of sale, for which each purchaser will furnish his notes, drawn to his own order, secured by mortgage on the property, and bearing ten per cent. per annum interest, from maturity, if not punctually paid, until final payment.

VI. Eight lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square comprised between Old Levee, Bienville, Custom-house, and Chartres streets, designated by the numbers one, two, three, four, five, six, seven, and eight, on a plan drawn by J. H. Dakin, dated 15th December, 1842, to be exhibited on the day of sale; said lots adjoin one another, and measure in English measure as follows:

Lot No. one forms the corner of Old Levee and Bienville streets, and has a front of twenty-eight feet four inches on Old Levee street, by seventy-three feet six and a half inches in depth and front on Bienville street, seventy-three feet six and a half inches deep on the opposite line dividing it from lot number two, and twenty-eight feet four inches in the rear; together with the two-story brick store thereon.

Lot No. two measures nineteen feet six inches front on Old Levee street, by a depth between parallel lines of seventy-three feet six and a half inches, and nineteen feet six inches in the rear, with the use of the above alley; together with the two-story brick store thereon.

Lot No. three measures eighteen feet two and a half inches front on Old Levee street, by a depth of eighty-six feet eleven inches on the line of lot number two and lot number six, an alley of three feet three and a half inches width intervening, and of eighty-six feet eleven inches on the opposite line dividing it from lot number four, and nineteen feet four and a half inches width in the rear, with the use of the above alley; together with the two-story brick store thereon.

Lot No. four measures nineteen feet ten inches front on Old Levee street, by a depth of one hundred and two feet seven inches and five lines between parallel lines, and nineteen feet ten inches in the rear; together with the four-story brick store thereon.

Lot No. 5 measures twenty-three feet three inches front on Old Levee street, by a depth between parallel lines of one hundred and two feet seven inches and five lines, and twenty-three feet three inches in width in the rear; together with the four-story brick store thereon.

Lot No. six measures twenty-one feet seven inches front on Bienville street, with an irregular depth of about sixty-six feet on one side, and about the same depth on the other side, the lines running irregularly, so as to give a depth on the extreme rear of fifteen feet eight and a half inches, with the use of the aforementioned alley; together with the three-story brick store and dwelling thereon.

Lot No. seven measures twenty-seven feet two and a half inches front on Bienville, by a depth of one hundred and six feet six inches on the line dividing it from lot number eight, and the same depth on the opposite line, running irregularly; together with the two-story brick store thereon.

Lot No. eight measures nineteeen feet seven and a half inches front on Bienville street, by a depth between parallel lines of one hundred and six feet six inches, and nineteen feet seven and a half inches in width in the rear; together with the two-story brick store thereon.

*Terms.* One-fourth of the purchase money payable in cash, and the balance in equal instalments at one, two, three, four, and five years credit from day of sale, for which each purchaser will furnish his notes, drawn to his own order, secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until paid.

VII. Eight lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square comprised with-

in Tchapitoulas, Gravier, New Levee, and Poydras streets, designated by the numbers one, two, three, four, five, six, seven, eight, on a plan drawn by J. H. Dakin, dated fifteenth December, eighteen hundred and forty-two, to be exhibited on the day of sale, and measure in English measure as follows:

Lot No. one forms the corner of Tchapitoulas and Gravier street, and measures twenty-one feet four inches front on Gravier street, by sixty-one feet nine inches deep and front on Tchapitoulas street, sixty feet seven and a quarter inches deep on the line dividing it from lot number two, and twenty-one feet three and a half inches in width in the rear; together with the new three-story brick store thereon.

Lot No. two measures twenty feet three and a half inches front on Gravier street, by a depth of sixty feet seven and a quarter inches on the line dividing it from lot number one, and fifty-nine feet five and a half inches on the line dividing it from lot number three, and twenty feet two inches in width in the rear; together with the new three-story brick store thereon.

Lot No. three measures twenty feet eight and a half inches front on Gravier street, by a depth of fifty-nine feet three and three-quarter inches on the line dividing it from lot number four, and twenty feet one and a half inches in width in the rear; together with all the buildings and improvements thereon.

Lot No. four measures twenty feet eight and a half inches front on Gravier street, by fifty-eight feet three and three-fourths inches deep on the line separating it from lot number three, and fifty-seven feet two inches on the line separating it from lot number five, and twenty feet one and a half inches in width in the rear; together with the buildings and improvements thereon.

Lot No. five measures twenty feet eight and a half inches front on Gravier street, by a depth of fifty-seven feet two inches on the line separating it from lot number four, and fifty-six feet six inches on an irregular line dividing it from the rear of lots numbers six, seven, eight, and twenty feet one and a half inches in width in the rear; together with the buildings and improvements thereon.

Lot No. six forms the corner of New Levee and Gravier streets, and has a front on New Levee street of nineteen feet five inches and eight lines, by a depth and front on Gravier street of sixty feet; sixty-nine feet two inches deep on the line separating it from lot number seven, and eighteen feet six inches in width in the rear; together with the buildings and improvements thereon.

Lot No. 7 measures nineteen feet five inches and eight lines front on New Levee street, by sixty-nine feet two inches deep on the line separating it from lot No. 8, and nineteen feet in width in the rear; together with the buildings and improvements thereon.

Lot No. 8 measures nineteen feet five inches and eight lines front on New Levee street, by a depth of seventy-three feet eight inches on the line separating it from lot No. 7, and of seventy-seven feet four inches on the opposite side line, and nineteen feet in width in the rear; together with the buildings and improvements thereon.

*Terms.* One-third of the purchase money payable cash, the balance in equal instalments, at six, twelve, eighteen, [and] twenty-four months credit, in notes of the purchasers, satisfactorily endorsed, secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

VIII. One lot of ground, with the two-story brick store thereon, situated in the suburb St. Mary, in the square comprised within Poydras, New Levee, Gravier, and Tchapitoulas streets, and designated by the No. 1, on a plan drawn by J. H. Dakin, dated fifteenth December, eighteen hundred and forty-two, to be exhibited on the day of sale. Said lot forms the corner of Poydras and New Levee streets, and measures thirty-five feet two-fifths inches front on New Levee, by one hundred feet three inches and four lines deep and front on Poydras street, 90 feet seven inches and two lines deep on the opposite line, and thirty-five feet two inches and two lines in width in the rear, all English measure, together with the use of an alley ten feet seven and a half in width.

Terms. One-third of the purchase money payable cash, the balance in equal instalments at six, twelve, eighteen, and twenty-four months credit, in notes of the purchaser, satisfactorily endorsed, secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

IX. A certain lot of ground, with the two-story brick store thereon, situated on the eastern side of Chartres street, between Custom-house and Canal streets, measuring in English measure thirty feet front on Chartres street, by sixty-four feet deep, bounded on one side by property now or lately belonging to James Collis.

*Terms.* One-third of the purchase money payable cash, the balance in equal instalments, at one and two years credit from day of sale, in notes of the purchaser, satisfactorily endorsed, secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until paid.

X. Two lots of ground, with the buildings and improvements thereon, situated in suburb St. Mary, in the square comprised within Camp, Julia, St. Charles, and St. Joseph streets, and designated by the Nos. 2 and 3, on a plan drawn by J. H. Dakin, dated fifteenth December, eighteen hundred and forty-two, to be exhibited on the day of sale; said lots measure in English measure as follows:

Lot No. 2 measures twenty-six feet eight inches front on Camp street, by a depth of one hundred and seventy-three feet between parallel lines, and twenty-six feet eight inches in width in the rear; together with the frame dwelling thereon.

Lot No. 3 measures twenty-six feet eight inches front on Camp street, by a depth between parallel lines of one hundred and seventy-three feet, and twenty-six feet eight inches in width in the rear; together with the frame dwelling thereon.

*Terms.* One-third of the purchase money payable cash, the balance in equal instalments at 6, 12, 18 and 24 months credit, in notes of the

purchaser satisfactorily endorsed, secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until paid.

XI. A certain lot, situated in the faubourg St. Mary, above this city, and designated by the No. 40, situated upon South street of the market, between New Levee and Tchapitoulas streets, measuring twenty-one feet seven inches front on said South street, by a depth of seventy feet one inch on the upper side bounded by lot No. 4, and of sixty-two feet six inches on the lower side bounded by lot 39, and twenty-two feet ten and three-fifths inches in width at the rear, where it is bounded by lot F, and the property now, or lately belonging to Daniel Hust, all English measure, as per plan by Joseph Pilie, deposited in the office of J. N. Duncan, late a notary in this city, on the seventh January, eighteen hundred and twenty-nine, together with the two-story brick store and kitchen and dwelling thereon.

*Terms.* One-third of the purchase money payable cash; the balance in equal instalments at six, twelve, and eighteen months credit, in notes of the purchaser satisfactorily endorsed, secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

XII. *Slaves.*

1. Mary, a negress, aged about 50 years; sickly.
2. Peter, a negro, aged about 40 years; carpenter, subject to fits.
3. Tom, a negro, aged about 70 years.
4. Joe, a negro, aged about 30, crippled.
5. William, a negro, aged about 40 years, plasterer.

Terms of sale—cash.

Sale to take place at Banks' arcade, in the city of New Orleans, to commence on Wednesday, the 15th day of February, at 12 o'clock, noon, and if not completed on that day, to continue at the same hour on the following days, until completed.

*Creditors to be personally notified of this application.*

Union Bank of Louisiana.
New Orleans Canal and Banking Company.
Bank of Louisiana.
L. C. Duncan.
S. B. Davis, through G. Strawbridge, his attorney.
Louisiana State Marine and Fire Insurance Company.
Municipality No. 2.
New Orleans and Carrollton Railroad Company.
City Bank of New Orleans.
The President, Directors, and Company of Bank of United States, through C. Adams, jr., and Frazier, &c.
Lauve, Brothers.

UNITED STATES DISTRICT COURT,
*Eastern district of Louisiana.*

In bankruptcy.

In the bankruptcy of Thomas Banks. Petition of F. [B.] Conrad, assignee. Petition to sell the real estate surrendered by the bankrupt.

*December* 23*d*, 1842.

Present, the hon. T. H. McCaleb.

The assignee of said estate having filed in this court a petition as above described, it is ordered by the court, that a hearing of the said petition be had on Thursday, the fifth day of January, eighteen hundred and forty-three, at 10 o'clock, A. M., when, as one of the mortgage creditors of said estate, you are notified to appear, and shew cause why the said assignee should not be authorized to erase and cancel all the mortgages, judgments, and liens, recorded in favor of certain creditors of said estate, so that he may convey a clear and unincumbered title to any purchaser thereof, reserving to such creditors all their rights in law to the proceeds of the sale of the said property upon the final distribution thereof, and why the said property should not be sold in the manner and form, and upon the terms suggested by the syndic, as particularly set forth in the schedule annexed to his said petition, and filed in court.

(Signed) N. R. JENNINGS, *Clerk.*

*Marshal's return.*

1. The Union Bank of Louisiana, personally on F. Frey, cashier, 29th.
2. The New Orleans Canal and Banking Company, personally on B. Chew, cashier, 29th.
3. Bank of Louisiana, personally on W. Leverich, cashier, 29th.
4. Lucius C. Duncan, esq., personally, 29th.
5. S. B. Davis, through his attorney, Geo. Strawbridge, personally, 29th.
6. Louisiana State Marine and Fire Insurance Company, personally on McDonald, secretary, 29th.
7. Municipality No. 2, personally on Lafonta, clerk of recorder, 29th.
8. New Orleans and Carrollton Railroad Company, personally on J. Nicholson, cashier, 29th.
9. City Bank of New Orleans, personally on J. Palfrey, cashier, 29th.
10. President, Directors, and Company of the Bank of the United States, through C. Adams, jr., and F. Frazier, receivers; personally on C. Adams, W. W. Frazier, 29th.
11. Lauve, Brothers, left at counting house with one of the firm, 29th.

Received December 28th, 1842, and served copy of the within order

of court on the above named parties, in the manner and on the date above stated. New Orleans, returned 4th January, 1843.

(Signed) A. SIDNEY ROBERTSON,
*U. S. Marshal.*
By GEO. W. GAVIN, *D'y U. S. M.*

UNITED STATES DISTRICT COURT,
*Eastern district of Louisiana.*

*Friday, January 6th,* 1843.

In the bankruptcy of Thomas Banks, F. B. Conrad, assignee, to sell the whole estate surrendered by bankrupt.

Present, honorable T. H. McCaleb.

This being the day fixed for the hearing of the said petition, notice having been published according to the rules of court, and personal notices having been served upon the following mortgage and judgment creditors as set forth in the petition or schedule annexed to said assignee's petition, to wit, the Union Bank of Louisiana, the New Orleans Canal and Banking Co., the Bank of Louisiana, Lucius C. Duncan, esq., T. B. Davis, esq., through Geo. Strawbridge, his attorney, the La. State Marine and Fire Insurance Co.; Muncipality No. 2; the N. Orleans and Carrolton Railroad Co., the City Bank of New Orleans, the President, Directors, and Co. of the Bank of the United States, thro' C. Adams, jr., and W. Frazier, receivers; Lauve, Brothers; and the following creditors having appeared this day, to wit, S. B. Davis, represented by G. Strawbridge, esq., L. C. Duncan in p. p., and presented oppositions to the sale to the manner and upon the terms proposed by the assignee; Thomas Slidell also appearing, representing C. Adams, jun., and W. W. Frazier, receivers of the Bank of the United States, and made no opposition to the terms of sale, nor to the erasure and cancelling the mortgages recorded in favor of the said banks, and none of the other creditors appearing, either in person or by attorney, it is ordered that the assignee be authorized to sell the property as exhibited upon the schedule annexed to his petition; and the court having considered the oppositions filed by the aforesaid creditors, it is ordered that the terms of sale, as suggested by the assignee, be so modified as to meet the said oppositions; that the property mortgaged to said Davis be sold upon the terms proposed by the assignee, reserving to said mortgage creditor his right to be paid out of the proceeds of the sale not only the capital due on the mortgage, but also on the interest that has accrued or may accrue on the capital until the final settlement and satisfaction of the debt, at the rate of ten per cent. per annum. That the property mortgaged to said L. C. Duncan be sold upon the terms suggested by the assignee, to be advertised in the New Orleans Bee and Tropic, according to the rules. All moneys and notes received by the said assignee on the sale of said property to be deposited in court according to the law and the rules, to await the further order of the court; and in order to convey a title to any purchaser thereof of the property surrendered,

it is ordered that the assignee be authorized to cause to be erased and cancelled from the office and mortgages, the mortgages recorded in favor of said creditors, reserving to them all their rights in law to the proceeds of the sale upon distribution thereof.

(Signed,) THEO. H. McCALEB, *U. S. judge.*

In the bankruptcy of Thomas Banks, F. B. Conrad, assignee, petition to erase and cancel mortgages.

*Friday, February 24th*, 1843.

The court met pursuant to adjournment; present the Hon. T. H. McCaleb.

On motion of F. B. Conrad, assignee of Thomas Banks, and on giving the court to be informed that, in pursuance of an order of this court heretofore rendered, he did cause to be sold by the marshal of the United States the property surrendered by the bankrupt to his creditors, known as Banks' arcade, more fully described in the schedule annexed to his petition; and on shewing to the court the within consent and authority of the New Orleans Canal and Banking Company, the first conventional mortgage on said property, to him, assignee, to sell said property, and to cause their mortgages in their favor to be cancelled for the purpose of giving titles to the purchasers, reserving their rights to be first paid out of the proceeds; and on further shewing to the court that the application of him, assignee, to sell said property, and to cause to be cancelled, for the purpose of giving titles to the purchasers, the conventional mortgages on said property fully described in the schedule annexed to assignee's petition, in favor of the New Orleans and Carrollton Railroad Company and the City Bank of New Orleans, second and third conventional mortgages respectively, has been duly notified to the said New Orleans and Carrollton Railroad Company and the said City Bank of New Orleans, and no objection being made to such application, it is ordered, adjudged, and decreed, that the recorder of mortgages of the parish and city of New Orleans, do erase and cancel from his books the said mortgages on the said property, in favor of the said New Orleans Canal and Banking Company, the said New Orleans Carrollon Railroad Company, and the said City Bank of New Orleans; reserving to said parties respectively their rights upon the proceeds of said property according to the ranks of their said respective mortgages.

Clerk's office, United States district court, in and for the eastern district of the State of Louisiana.

I, N. R. Jennings, clerk of the above entitled court, do hereby certify, that the foregoing are true and faithful copies of the original now on file and of record; and I further certify, that the foregoing orders of court are true and correct extracts from the minutes of this court.

Witness my hand and the seal of this court this sixth day of June, A. D. eighteen hundred and forty-four.

[SEAL.] (Signed,) N. R. JENNINGS, *Clerk.*

1845.



*Continuance.*

CITY BANK OF NEW ORLEANS,
vs.
WILLIAM HOUSTON & als. } No. 6611.

This case came on this day for trial before the court; Lockett and Micon, and R. H. Wilde for plaintiff; Levi Pierce, C. Roselius, Conrad, Grivot, Eyma, and Randall for defendants. After hearing pleadings and evidence, the same was continued till Monday next, at nine o'clock, A. M.

(Extract from the minutes, April 26th, 1845.)

*Testimony, filed April 28th,* 1845.

CITY BANK OF N. ORLEANS,
vs.
WILLIAM HOUSTON & als.

Testimony resumed in open court, on trial, 28th April, 1845.

J. B. Marks, for plaintiff, sworn, says he is a notary public in this city; the acts of sale for the Arcade property were passed before witness; being asked to state the reason why the passing of the acts was delayed from February 1st to July, says it was on account of mortgages which were on record and not erased; there were so many mortgages that he cannot now recollect any particular one; the register of mortgages refused to erase any of them.

It is admitted by defendants that they refuse to receive acts of sale, or to comply with the adjudication, until a clear certificate could be produced.

Defendants introduced in evidence documents T, U, V, W, X.

George W. Gavin for defendant, sworn, says he is a Dy. U. S. marshal; that he amended the return of service of notice in the bankruptcy of T. Banks.

*Document T.*

Notarial copy of sale. Filed April 28th, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb.

In the matter of the petition of Thomas Banks, to be declared bankrupt. No. 353.

The petition and proofs having been inspected and considered by the

court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk.*
By ED. LAUVE, *D'y clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the twenty-fifth day of February, eighteen hundred and forty-three, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Bank's arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Francis Malborn Fisk, of this city, for the price and sum of two thousand five hundred and fifty dollars, payable one third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity, (if not then paid,) at the rate of ten per cent. per annum, until final payment; he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in anywise appertaining, (making part of the building known by the name of Banks' arcade,) situate in Municipality No. two of this city, and fronting on the Arcade passage, between Gravier and Natchez

streets, designated by the No. fourteen on a plan drawn by James H. Dakin on the fifteenth January last, and deposited as plan forty-eight in the book of plans of the undersigned notary; said lot measures in English measure twenty-four feet one inch front on said Arcade passage, eighty-one feet ten inches and three lines in depth on the side adjoining lot No. fifteen on said plan, eighty-two feet in depth on the side adjoining lot No. thirteen on said plan, and twenty-four feet width in the rear.

Which lot makes part of lot No. five, as per plan drawn by J. Pilié, city surveyor, dated twentieth May, eighteen hundred and thirty, and annexed to an act of sale passed before Octave de Armas, a notary public in this city, on the fourteenth February, eighteen hundred and thirty-one, acquired by said Thomas Banks (with another lot of ground) from Louis G. Hillesberg, by an act passed before G. R. Stringer, a notary public in this city, on the eighth February, eighteen hundred and thirty-three.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office on the date hereof, it appears that the property herein conveyed is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee, as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Francis Malborn Fisk, here present, and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the lot of ground, with the buildings thereon, rights, ways, privileges, &c., thereunto belonging, as herein before described. To have and to hold the said lot of ground, buildings, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property and appurtenances; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of two thousand five hundred and fifty dollars, in part payment and in deduction of which said purchaser has paid the sum of eight hundred and fifty dollars in ready money; and in payment of the balance of said price, to wit, the sum of seventeen hundred dollars, said purchaser has furnished his five several promissory notes for the sum of three hundred and forty dollars each, to his own order, and by himself endorsed, dated the said fifteenth day of February, eighteen hundred and forty-three, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber said *said* property to the prejudice of this mortgage.

Done and passed in my office, at the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who have hereunto signed their names with said parties, and me, the said notary.

Original signed, F. B. CONRAD, *Assignee.*
F. M. FISK,
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this ninth day of June, eighteen hundred and forty-three.

[SEAL.]

(Signed) JOS. B. MARKS, *Not. pub.*

*Document U.*

(Sale of property.) Filed April 28th, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
*Eastern district of Louisiana:*

Sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act

of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings. N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Dy. clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared that, pursuant to and by virtue of another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the twenty-fifth February, eighteen hundred and forty-three, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described was adjudicated to Francis Malborne Fisk, of this city, for the price and sum of two thousand five hundred dollars, payable one third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear an interest from maturity, (if not then paid,) at the rate of ten per cent. per annum, until final payment; he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in anywise appertaining, (making part of the building known by the name of Banks' arcade,) situated in Municipality No. two of this city, and fronting on the Arcade passage, between Gravier and Natchez streets, designated by the number thirteen on a plan drawn by James H. Dakin on the fifteenth of January last, and deposited as plan No. forty-eight in the book of plans of the undersigned notary; said lot measuring in English measure twenty-five feet front on said Arcade

passage, eighty feet in depth on the side adjoining lot No. fourteen on said plan, eighty-two feet one inch and seven lines in depth on the side nearest Gravier street, and twenty-five feet width in the rear.

Which lot makes part of lot No. three, as per plan drawn by J. Pilié, city surveyor, dated twentieth May, eighteen hundred and thirty, and annexed to an act of sale passed before Octave de Armas, a notary public in this city, on the fourteenth of February, eighteen hundred and thirty-one; acquired by said Banks, (with another lot,) from Louis G. Hillesberg by an act passed before G. R. Stringer, a notary public in this city, on the eighth February, eighteen hundred and thirty-three.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Francis Malburne Fisk, here present and accepting for himself, and his heirs and assigns, and acknowledging due delivery and possession, the lot of ground, with the buildings thereon, rights, ways, privileges, &c., thereunto belonging, as herein before described.

To have and to hold the said lot of ground, buildings, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property, &c.; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of two thousand five hundred dollars, in part payment and deduction of which said purchaser has paid the sum of eight hundred and thirty-three dollars thirty-three and one-third cents, in ready money; and in payment of the balance of said price, to wit, the sum of sixteen hundred and sixty-six dollars sixty-six and two-thirds cents, said purchaser has furnished his five several promissory notes for the sum of three hundred and thirty-three dollars thirty-three and one third cents each, to his own order, and by himself endorsed, dated the said fifteenth day of February, eighteen hundred and forty-three, and payable respectively in six, eighteen, twenty-four, and thirty months after date; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready

money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber said property to the prejudice of this mortgage.

Done and passed in my office, at the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel [J.] Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed, F. B. CONRAD, *Assignee.*
F. M. FISK,
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this ninth day of June, eighteen hundred and forty-three.

[SEAL.] (Signed,) JOS. B. MARKS, *Not. Pub.*

Mortgage cancelled on the note payable twelve months after date, 20th June, 1844.

*Copy of note.*

Annexed to the foregoing sale of property, marked U.

$333 $\frac{33}{100}$ NEW ORLEANS, 15*th February*, 1843.

Twelve months after date, I promise to pay, to the order of myself, three hundred and thirty-three $\frac{33}{100}$ dollars, value received, with interest thereon, from maturity until paid, at the rate of ten per cent. per annum.

(Signed,) F. M. FISK, (*erased.*)

Endorsed:—F. M. FISK.

Ne varietur, New Orleans, June 1, 1843.

JOS. B. MARKS, *Not. Pub.*

Cancelled by 20th June, 1844.

J. BELL.

*Document V.*

Notarial copy of sale, filed April 28th, 1845.

STATE OF LOUISIANA, *city of New Orleans.*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, personally appeared Francis Buckner Conrad, of this city, herein acting in

his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana. Sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August nineteenth, eighteen hundred and forty-one.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Deputy clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an unfinished act from said assignee to Mark Davis, on file in this office, under date of the twenty-fifth February, eighteen hundred and forty-three, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Francis Malborne Fisk, of this city, for the price and sum of three thousand three hundred and fifty dollars, payable one-third in cash, and the

balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in Municipality No. two, of this city, in the square bounded by Gravier, Tchapitoulas, Natchez, and Magazine streets, and designated by the number twenty-one, on a plan drawn by James H. Dakin, dated fifth of January last, and deposited as plan No. forty-eight in the book of plans of the undersigned notary; said lot measures twenty-four feet eight and one-half inches front on Natchez street, fifty-eight feet eleven inches and seven lines in depth on the side adjoining lot No. twenty on said plan, fifty-seven feet six inches and two lines in depth on the opposite side line, and twenty feet five inches width in the rear; the whole American measure.

Which lot is composed of the whole lot No. twelve, and part of lot No. thirteen, on a plan drawn by Joseph Pilié, on the twenty-sixth of January, eighteen hundred and twenty-eight, and annexed to an act passed before G. R. Stringer, a notary public in this city, on the twenty-sixth of December, eighteen hundred and twenty-eight, acquired by said Thomas Banks (with other lots) from M. Morgan, by an act passed before L. T. Caire, a notary public in this city, on the twenty-sixth of May, eighteen hundred and thirty-one.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to Mark Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Francis Malborne Fisk, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the property hereinafter described. To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property and appurtenances; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the abovementioned adjudication, is made and accepted for and in consideration of the price and sum of three thousand three hundred and fifty dollars, in part payment and deduction of which said purchaser has paid the sum of eleven hundred and sixteen dollars sixty-six and two-thirds cents,

in ready money; and in payment of the *payment* of said price, to wit, the sum of two thousand two hundred and thirty-three dollars thirty-three and one-third cents, said purchaser has furnished his five several promissory notes, for the sum of four hundred and forty-six dollars sixty-six and two-thirds cents each, to his own order and by himself endorsed, dated the fifteenth of February, eighteen hundred and forty-three, and payable respectively at six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not punctually paid at maturity, it is well understood, are to bear an interest from that time until paid at the rate of ten per cent. per annum, but without any right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself and his heirs not to sell, alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said appearers, and me, the said notary.

Original signed,

F. B. CONRAD, *Assignee.*
F. M. FISK,
D. J. RICARDO,
THEO. COMMAGERE.
JOS. B. MARKS,
*Notary Public.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this ninth day of June, eighteen hundred and forty-three.

(Signed) JOS. B. MARKS, *Not. Pub.*

*Document W.*

Notarial copy of sale, filed 28th April, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses:

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, hav-

ing been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August nineteenth, eighteen hundred and forty-one.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it [is] furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and decrees were this day made by the court, and duly entered on the docket of bankrupt proceedings. N. R. JENNINGS, *Clerk.*

By ED. LAUVE, *Deputy clerk of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to and by virtue of another order of said court, dated the 6th day of January, 1843, a certified copy whereof is annexed to an unfinished act from said assignee to M. Davis, on file in this office under date of the 25th of February, 1843, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the 15th day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors; at which public sale the hereinafter described property was adjudicated to Francis Malborne Fisk, of this city, for the price and sum of three thousand three hundred dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest

from maturity (if not then paid) at the rate of ten per cent. per annum, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, (making part of the building known as Banks' arcade, situated in the square bounded by Natchez, Tchapitoulas, Gravier, and Magazine streets, designated by the number eighteen, on a plan drawn by James H. Dakin, dated the fifth of January last, and deposited as plan No. forty-eight in the book of plans of the undersigned notary; said lot measures (in English measure, twenty-four feet one inch front on Natchez street, sixty-one feet ten inches and seven lines in depth on the side adjoining lot No. nineteen on said plan, twenty-five feet five inches width in the rear, and sixty-three feet four inches and five lines in depth and front on the Arcade passage, which passage is in common to all the lots fronting thereon.

Which lot makes a part of lots numbers seventeen, eighteen, nineteen, and twenty-four, on a plan drawn by Joseph Pilié, surveyor, dated twenty-sixth of January, eighteen hundred and twenty-eight, annexed to an act passed before G. R. Stringer, late notary public in this city, on the twenty-sixth day of December, eighteen hundred and twenty-eight, acquired by said Thomas Banks with other lots from M. Morgan, by an act passed before L. T. Caire, notary public in this city, on the twenty-sixth day of May, eighteen hundred and thirty-one.

By reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office on the date hereof, it appears that said property is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis Buckner Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Francis Malborne Fisk, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, the property herein before described, with all the rights, privileges, and advantages thereunto belonging. To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the said property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the above mentioned adjudication, is made and accepted for and in consideration of the price and sum of *of* three thousand three hundred dollars, in part payment and deduction of which said purchaser has paid the sum of one thousand one hundred dollars in ready money; and in payment of the balance of said price, to wit, the sum of two thousand two hun-

dred dollars, the said purchaser has furnished his five several promissory notes, for the sum of four hundred and forty dollars each, drawn to his own order, and by himself endorsed, dated the said fifteenth day of February, eighteen hundred and forty-three, and payable respectively at six, twelve, eighteen, twenty-four, and thirty months after date; said notes if not paid at maturity, it is well understood, are to bear an interest from that time until paid at the rate of ten per cent. per annum, but without the right on the part of the purchaser to delay said payments beyond the period of their respectively falling due.

Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof. And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes; promising and binding himself not to sell, alienate, deteriorate, or incumber said property, to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed,

F. B. CONRAD, *Assignee.*
F. M. FISK,
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this tenth day of June, eighteen hundred and forty-three.

(Signed,) JOS. B. MARKS, *Not. Pub.*

*Document X.*

Order of court, &c., filed April 28th, 1845.

United States district court, eastern district of Louisiana, in bankruptcy, New Orleans, December 5th, 1842.

Present, the hon. Theo. H. McCaleb, judge.

In the matter of Thomas Banks, for the benefit of the act of Congress.

Thomas Banks, of New Orleans, having filed his petition, praying to be discharged in full from all his debts:

And for a certificate of such discharge, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August nineteenth, eighteen hundred and forty-one:

And it being shewn, to the satisfaction of the court, that the said bankrupt has bona fide surrendered all his property and rights of property, and that he has fully complied with and obeyed all the orders and directions which have from time to time been passed by this court, and has otherwise conformed to all the requisites of the said act:

That proof of publication, according to the rules of this court, has been duly made, and notice given to the creditors; and it further appearing that no written dissent to the bankrupt's discharge has been filed by a majority in number and value of his creditors who have proved their debts, and no opposition whatever has been made, no cause being now shewn to the contrary, why the prayer of the petitioner should not be granted:

It is therefore, by virtue of the act aforesaid, ordered and decreed by the court, that the said Thomas Banks be, and he is accordingly hereby, fully discharged of and from all the debts owing by him at the time of the presentation of his petition to be declared bankrupt, to wit, on the thirtieth of July, A. D. eighteen hundred and forty-two.

It is further ordered, that the clerk duly certify a copy of this decree, under the seal of this court, and deliver the same to the bankrupt when demanded.

(Signed) THEO. H. McCALEB, *U. S. Judge.*

CLERK'S OFFICE, *December 5th*, 1842.

I, N. R. Jennings, clerk of the district court of the United States for the eastern district of Louisiana, do certify, that the above order and decree was this day made by the court, and duly entered of record.

In witness whereof, I have hereunto set my hand and the seal of the court, this twenty-eighth day of April, A. D. one thousand eight hundred and forty-five.

(Signed) N. R. JENNINGS, *Clerk.*

*Continuance.*

CITY BANK OF NEW ORLEANS vs. WILLIAM HOUSTON et als. } No. 6611.

This case came on for trial this day before the court. Micon and Wilde, for plaintiff; Eyma, Grivot, Peirce, Roselius, and F. B. Conrad, for defendants. After hearing pleadings and evidence, by consent the same was continued until Saturday next, at 10 o'clock, A. M.

(Extract from the minutes, 28th April, 1845.)

*Testimony taken in open court—filed 20th May*, 1845.

Sam'l J. Peters, for defendants, sworn, says that he is, and has been for some years past, the president of the City Bank. Being asked whether, as president of the City Bank, he knows whether any particular course was resolved upon by that institution with regard to the debt due by Thos. Banks to that institution, and, if so, for what reasons, and on what account it was adopted, and how continued, says, that at

the time of the failure of Mr. Banks he owed the City Bank about $44,000, exclusive of interest, as will appear by the bond, and that debt was secured by a mortgage on the Arcade property. There were other mortgages before that of the City Bank on the property; those of the Canal Bank, and that of the Carrollton Bank. The City Bank never proved its claim on Banks' estate in bankruptcy by advice of counsel, and pursued the same course in all similar cases. The bank was advised by counsel that the mode of selling the property was of doubtful legality. Subsequent to the sale of that property, some difficulty having arisen about raising the mortgages and giving a title to the Arcade, the City Bank was applied to by Mr. Hullen, with a proposition that the bank should authorize the erasure of the mortgage on the ground that the property had been sold, and had not produced more than enough to pay the Canal Bank; that proposition was referred to the counsel of the bank; the bank was advised not to accede to it. The bank did not accede to it; as to the proceedings since, the whole affair was handed over to the counsel of the bank, and witness supposes that proceedings afterwards are matters of record. City Bank never opposed in any bankrupt case when it was in possession of mortgage, as witness thinks; this being the settled course of the bank under the advice of their counsel, not wishing in any to recognise the power of the bankrupt court to sell the property mortgaged.

Witness does not recollect receiving notice to appear and shew cause why the property in question should not be sold. Says he does not recollect receiving any such notice. Those papers are not kept by him, but are sent by the cashier to the bank's counsel. Witness was not present at the sale of the Arcade property. There was a lot belonging to Banks' estate for sale on the same day which witness wished to buy, but forgot to be present at the sale.

Conrad, for defendants, offered in evidence copy of sale from Banks to Louis A. Caillavet, marked A.

Geo. W. Gavin, for defendants, sworn, says that he remembers having handed a notice of the application to sell upon Mr. Palfrey, cashier of the City Bank; says that he always serves these notices at the banking house.

*Cross-examined by plaintiffs.*

Asked if he has any recollection of the particular service made in this case; says he thinks he has, but his recollection is refreshed by the return made in his own handwriting. Asked if he has any other reason than what he has already stated, why he made personal service on Mr. Palfrey at the bank; says that he has had a long personal acquaintance with Mr. Palfrey, and having made the service himself, he has no doubt that he made the service on Mr. Palfrey at the bank; he is positive that he made the service at the bank; that there is another circumstance, that he is in the habit of going into the bank, and going directly through and delivering papers to Mr. Palfrey; for all these reasons witness is positive the service was made on Mr. Palfrey at the bank.

*Re-examined.*

Witness never departed from his rule of making the services at the bank in all cases where he had services to make on banks. Is positive that he never served any notice on Mr. Palfrey, as cashier, in the street, or out of his banking house.

Defendants offer in evidence newspapers containing advertisements of the sale of the property in question, as well as the application to sell said property, and the notice to creditors to shew cause why the property should not be sold; and also the original bond upon which suit was instituted in this case, and referred to as annexed to plaintiff's petition, is considered as filed by plaintiffs.

*Document A.*

Notarial copy of sale, filed 20th May, 1845.

STATE OF LOUISIANA, *city of New Orleans:*

Before me, Joseph Benzaken Marks, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses:

Personally appeared Francis Buckner Conrad, of this city, herein acting in his capacity of assignee of Thomas Banks, also of this city, having been duly appointed as such by an order of the United States district court for the eastern district of Louisiana, which order is in the words and figures following, to wit:

United States district court, eastern district of Louisiana, sitting in bankruptcy, September 5th, 1842.

Present, the honorable T. H. McCaleb, judge.

In the matter of the petition of Thomas Banks, to be declared a bankrupt. No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered, that Thomas Banks be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841.

It is further ordered, that F. B. Conrad be, and he accordingly is hereby, appointed assignee of the estate of the said bankrupt, and that the said F. B. Conrad give security in a bond to the United States, with two sufficient sureties, to be approved by the court, in the sum of thirty thousand dollars, conditioned for the true and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify and cause to be delivered this order to the said F. B. Conrad.

CLERK'S OFFICE, *September 5th*, 1842.

I, N. R. Jennings, clerk of the United States district court for the eastern district of Louisiana, do certify, that the above orders and de-

crees were this day made by the court, and duly entered on the docket of bankrupt proceedings.

N. R. JENNINGS, *Clerk*,
By ED. LAUVE, *Dy. clerk*
*of the United States district court, eastern district of Louisiana.*

Which said appearer declared, that pursuant to, and by virtue of, another order of said court, dated the sixth day of January, eighteen hundred and forty-three, a certified copy whereof is annexed to an act unfinished from said assignee to Mark Davis, on file in this office under date of the 25th February, eighteen hundred and forty-three, the United States marshal for the eastern district of Louisiana, after the advertisements required by law had been made, exposed for sale at public auction, on the fifteenth day of February, eighteen hundred and forty-three, at Banks' arcade, Magazine street, in this city, certain property surrendered by Thomas Banks to his creditors.

At which public sale the hereinafter described property was adjudicated to Louis Arban Caillaret, of Beloxi, State of Mississipi, for the price and sum of six thousand one hundred dollars, payable one-third in cash, and the balance in equal instalments at six, twelve, eighteen, twenty-four, and thirty months credit, for notes secured by mortgage on the property, and to bear interest from maturity (if not then paid) at the rate of ten per cent. per annum, until final payment, he being the last and highest bidder for the said property, which is of the description following, to wit:

A certain lot of ground, together with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, (making part of the building known as Bank's arcade,) situated in Municipality No. two, of this city, in the square bounded by Magazine, Natchez, Tchapitoulas, and Gravier streets, designated by the number eight, on a plan drawn by James H. Dakin, on the fifteenth day of January last, and deposited as plan number forty-eight, in the book of plans of the undersigned notary; said lot measures in English measure twenty-three feet eight inches front on Magazine street, fifty-eight feet eight and one-half inches in depth on the side adjoining lot number seven on said plan; fifty-eight feet seven inches in depth on the side adjoining lot number nine on said plan; and twenty-two feet nine and three quarter inches width in the rear and front on the Arcade passage, which passage is in common to all the lots fronting thereon.

Part of said lot was acquired by said Thomas Banks (with other property) from M. Morgan, by an act passed before L. T. Caire, notary public in this city, on the twenty-sixth day of May, eighteen hundred and thirty-one, and the remainder of said lot acquired by said Banks (with other property) from Louis G. Hillesberg, by an act passed before G. R. Stringer, late notary public in this city, on the eighth day of February, eighteen hundred and thirty-three; by said act passed before L. T. Caire, notary, he, said Morgan, sold to said Banks seven lots of ground designated by the numbers twelve, thirteen, sixteen, twenty-

four, seventeen, eighteen, nineteen, as per plan drawn by Joseph Pilié, surveyor, dated twenty-sixth January, eighteen hundred and twenty-eight; a part of lot No. seventeen makes part of the lot herein conveyed, and by said act passed before G. R. Stringer, late notary, he, said Hillesberg, sold to said Banks two lots of ground designated by the numbers three and four on a plan drawn by Joseph Pilié, surveyor, dated twentieth May, eighteen hundred and thirty, and part of said lot No. four makes up the remainder of the lot herein conveyed The third story of the premises herein conveyed has been leased by the bankrupt to J. Hewlet until the twenty-fifth day of April last, up to which time no rent will be received by the purchaser.

And by reference to the certificate of the recorder of mortgages for this city and parish, dated this day, and annexed to an act from said assignee to M. Davis, passed in this office on the date hereof, it appears that the property herein conveyed is free from incumbrance.

Now, in consideration of the premises, and in confirmation of the said adjudication, the said Francis B. Conrad, acting in his capacity of assignee as above set forth, does by these presents sell, bargain, convey, transfer, assign, set over, and deliver, unto the said Louis Arban Caillaret, herein represented by J. M. Lavillebeuve, of this city, by virtue of a power of attorney passed before me, notary, on the seventeenth day of February last, here present, and accepting for his said principal, his heirs and assigns, and acknowledging due delivery and possession [of] the property herein before described, with all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining.

To have and to hold the said property, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; the said assignee hereby vesting in said purchaser all the rights and titles of ownership and property which the said bankrupt had in and to the property; the said rights and titles to be enjoyed and exercised by the present purchaser to the fullest extent, by virtue of these presents.

This present sale, pursuant to the terms and conditions of the abovementioned adjudication, is made and accepted for and in consideration of the price and sum of six thousand one hundred dollars, in part payment and deduction of which the said purchaser (through his attorney aforesaid) has paid the sum of two thousand and thirty-three dollars thirty-five cents in ready money; and in payment of the balance of said price, to wit, the sum of four thousand and sixty-six dollars sixty-five cents, the said attorney has furnished five several promissory notes of his said principal, for the sum of eight hundred and thirteen dollars thirty-three cents each, to his own order and by him endorsed, dated the said fifteenth day of February, eighteen hundred and forty-three, and payable respectively in six, twelve, eighteen, twenty-four, and thirty months after date at ; said notes, if not paid at maturity, it is well understood, are to bear an interest from that time until paid, at the rate of ten per cent. per annum, but without the right on the part of the purchaser to *defray* said payments beyond the period of their re-

spectively falling due. Which promissory notes, after having been paraphed ne varietur by me, notary, in order to identify them herewith, were with said ready money delivered to said assignee, who hereby acknowledges the receipt thereof.

And in order to secure the payment of said five promissory notes, with such interest as may accrue thereon, the said purchaser (through his attorney aforesaid) doth hereby mortgage and specially hypothecate the property herein conveyed in favor of said assignee, or of the last holder or holders of said notes, hereby binding his said principal not to sell, alienate, deteriorate, or incumber said property to the prejudice of this mortgage.

Done and passed in my office, in the city of New Orleans aforesaid, this seventh day of June, (1843) eighteen hundred and forty-three, in presence of Daniel J. Ricardo and Theophile Commagere, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names with said parties, and me, the said notary.

Original signed,

J. M. LAVILLEBEUVE,
F. B. CONRAD, *Assignee.*
D. J. RICARDO,
THEO. COMMAGERE,
JOS. B. MARKS,
*Notary public.*

I certify the foregoing to be a true copy from the original extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and forty-five.

[SEAL.] (Signed) JOS. B. MARKS.
*Notary public.*

*Continuance.*

CITY BANK OF NEW ORLEANS,
vs.
WILLIAM HOUSTON & als. } No. 6611.

This case came on this day for trial before the court. H. Lockett and R. H. Wilde, for plaintiffs. Levi Peirce, F. B. Conrad, C. M. Randall, M. Grivot, for defendants.

After hearing proceedings and evidence, the same was continued to Friday next.

(Extract from the minutes, 20th May, 1843.)

*Motion to file supplemental petition.*

CITY BANK OF N. O.,
vs.
WM. HOUSTON & al. } No. 6611.

The plaintiffs having moved to file a supplemental petition by way of amendment, presenting the question arising under the bankrupt law,

and the exemption claimed by said plaintiffs under the second section thereof, in such form that the same may be reviewed by the Supreme Court of the United States, it is ordered that the counsel of the defendants shew cause on Wednesday next, twenty-eighth May instant, at 9 o'clock, why said amendment should be allowed.

(Extract from the minutes, 26th May, 1845.)

*Service of the above rule.*

Received May 26th, 1845, and served copies of the within rule on C. M. Randall, F. B. Conrad, C. Roselius; on the same day, on M. Grivot, L. Peirce; and on Louis Eyma, by leaving at his office on the 27th. Returned May 28th, 1845.

(Signed) ARM. GUYAL, *Sheriff com. court.*

*Continuance.*

CITY BANK OF NEW ORLEANS, vs. WILLIAM HOUSTON & al. } No. 6611.

This case came on this day for trial before the court. H. Lockett, W. C. Micon, and R. H. Wilde, for plaintiffs. Levi Peirce and M. Grivot, for defendants.

After hearing arguments of counsel, the same was continued over to Wednesday next, at 9 o'clock, A. M.

(Extract from the minutes, 26th May, 1845.)

*Order granting leave to file supplemental petition.*

CITY BANK OF NEW ORLEANS, vs. WILLIAM HOUSTON & als. } No. 6611.

The rule herein taken by the plaintiffs on the 26th instant to have leave to file a supplemental petition, came on this day for hearing before the court. H. Lockett, W. C. Micon, and R. M. Wilde, for plaintiffs. Levi Peirce, C. M. Randall, Roselius and Grivot, for defendants.

After hearing counsel, the court considering the supplemental petition now offered to be filed in the nature of a replication to the answer of the defendants, ordered that the rule be made absolute, and that the plaintiffs have leave to file the same.

[Extract from the minutes, 28th May, 1845.)

*Supplemental petition, filed 28th May, 1845.*

THE CITY BANK, vs. HOUSTON & al. } Commercial court.

The supplemental petition of the City Bank, filed by leave of the court in this case, respectfully shews:

That by the answers of the said defendants, and the proofs adduced by them, it manifestly appears that said defendants claim title to the

mortgaged premises by act of sale from the assignee in bankruptcy of Thomas Banks, and pretend that the mortgage of your petitioners has been razed and cancelled by virtue of proceedings in the district court of the United States for the eastern district of Louisiana, sitting as a bankrupt court, and holding summary jurisdiction in cases of bankruptcy, and by virtue of certain other proceedings had or taken in State court in aid of the said bankrupt court. And your petitioners aver that they did not prove their demand against the estate of the said Thomas Banks in the said bankrupt court, nor were they in any wise parties to the said proceedings in bankruptcy, nor were they duly and legally cited to appear, or make defence thereunto; and that they are in no wise bound thereby, the same being, as to your petitioners, res inter alios acta.

And your petitioners further aver, that the lien of their said mortgage, according to the laws of the State of Louisiana, and the charter of the said City Bank, is expressly saved and protected by the second section of an "act to establish a uniform system of bankruptcy throughout the United States," passed the nineteenth day of August, in the year of our Lord eighteen hundred and forty-one; and that according to the tenor and effect, and true intent and meaning of the said act, the sound construction and interpretation whereof is necessarily involved in the decision of this case, your petitioners are in no wise bound or affected by the said proceedings in bankruptcy, nor is the lien of their said mortgage thereby in any wise legally destroyed, impaired, or diminished.

And so your petitioners in fact say, that there is drawn in question the construction of the said statute of the United States, and of a right, title, privilege, or exemption, specially claimed and set up by your petitioners under such statute.

(Signed) R. H. WILDE &
LOCKETT & MICON,
*Plaintiffs' attorneys.*

*Testimony filed in evidence, 28th May,* 1845.

CITY BANK,
vs.
HOUSTON & als.

The rules of the commercial court introduced in evidence on the trial of the motion to annul petition, (by Peirce.)

*Bill of exceptions of defendants, filed 28th May,* 1845.

CITY BANK,
vs.
HOUSTON & al. } Commercial court.

This cause being on trial, and the evidence on both sides closed, the opening argument of plaintiffs closed, and the arguments on behalf of defendants being about to commence, the plaintiff at this stage moved to file an amended petition on file, which was objected to by defend-

ants, because contrary to the rules of court; no amendment being allowed after the case is fixed for trial, because too late; the evidence having been concluded and the case on argument; because giving new rights to plaintiffs which he had not claimed in his original petition, or by amended petition within reasonable time, and that he is barred by his own negligence or delay.

But the court overruled the objections, and admitted the amended petition; to which opinion and admission the defendants excepted, and prayed that this bill may be allowed, which is done accordingly.

*By the court.*

The amended petition raises no new issue, but merely secures to the plaintiff in a definite form the right of a writ of error to the Supreme Court of the United States, and is in fact a replication to that effect, which cannot be refused to the party under any statute or rule of the State court, when he is entitled to it under the laws of the United States. (Signed) C. WATTS, *Judge*.

*Continuance.*

CITY BANK OF N. ORLEANS, vs. WM. HOUSTON & als. } No. 6611.

This case was by consent of parties continued to Friday next, 30th instant.

(Extract from the minutes, 28th May, 1845.)

*Continuance.*

CITY BANK OF NEW ORLEANS, vs. WILLIAM HOUSTON & al. } No. 6611.

This case came on this day for trial before the court. H. Lockett, W. C. Micon, and R. M. Wilde, for plaintiffs; L. Peirce, F. B. Conrad, for defendants.

After hearing argument of counsel for defendant, the same was continued till Monday morning.

(Extract from the minutes, May 30th, 1845.)

*Testimony, filed 2d June*, 1845.

CITY BANK, vs. HOUSTON & al. }

Conrad filed in evidence rule of court marked 1.

Also advertisement of sale marked 2.

Also rules of the Supreme Court of the United States marked 3.

Also rule on Gavin marked 4.

*Document marked* 1.

(Rule of court, filed in evidence 2d June, 1845. Wednesday, November 23d, 1842.

Present, the honorable T. H. McCaleb.

*Rule of Court.*

It is ordered by the court, that from and after this date, there shall be special days fixed for the hearing and trial of all cases in bankruptcy. That all motions, rules, &c., shall be made returnable upon those particular days, to wit, Thursday and Friday of each week; that by law the bankrupt court is always open for the filing of petitions for hearing, for decrees, and final discharges.

I certify the above to be a true copy, from the entry on the minutes.
[SEAL.] (Signed) N. R. JENNINGS, *Clerk.*

Doc't marked 2.

*Publication according to the rules of court in bankruptcy. Filed 2d June*, 1845.

In bankruptcy. United States district court, eastern district of Louisiana. December 23d, 1842.

Present, the honorable T. H. McCaleb.

In the bankruptcy of Thomas Banks, F. B. Conrad, assignee.

*Petition to sell.*

Upon reading the petition of the said assignee to sell the property and valuable real estate surrendered by the bankrupt, and upon the terms suggested by the said assignee in his petition aforesaid, to wit:

1st. All that space of ground in this city, with the improvements thereon, known as the City Hotel; said property to be subdivided and sold in such lots as the assignee may see proper; together with nine hundred and forty-two shares of the capital stock of the Union Bank of Louisiana.

*Terms.* One-fourth cash; and for the remainder the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan on the stock to the amount of twenty-five dollars per share, renewable according to the charter of the bank; and the balance of the price payable at 6, 12, 18, and 24 months from day of sale, in notes drawn by the purchaser to his own order, secured by mortgage on the property, with 10 per cent. interest after due, until paid.

2d. All that space of ground in this city, with the improvements thereon, known as Banks' arcade, to be subdivided and sold in lots as the assignee may deem most advisable, with the concurrence of the mortgage creditors.

*Terms.* One-third in cash, and the balance in equal instalments of 6, 12, 18, 24, and 30 months, in notes drawn and secured as above.

3. Four lots of ground, with the buildings and improvements thereon, in the suburb St. Mary, comprised between Tchapitoulas, Gravier, Magazine and Natchez streets. Lot No. 1, known as the National Hotel, with 450 shares of stock of the Union Bank of Louisiana; lot No. 2, with 150 shares; lot No. 3, 150 shares; lot No. 4, with 152 shares of stock of said bank.

Terms to be the same as set forth in No. 1 above.

4. 4 lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square comprised between Poydras, Lafayette, Tchapitoulas and Commerce streets, and designated by 1, 2, 3, and 4, together with 60 shares of the capital stock of the Union Bank of Louisiana, upon each of the lots, No. 1, 2, and 3; and 70 shares upon lot No. 4.

Terms to be the same as set forth above in Nos. 1 and 3.

5. Five lots of ground, with the buildings and improvements thereon, in this city, situate in the suburb St. Mary, on the square comprised between New Levee, Girod, Commerce, and Notre Dame streets. Lot No. 1 known as the Commercial Hotel.

*Terms.* One-fourth payable in cash, and the balance at one, two, three, four, and five years credit; the notes to be drawn to the purchaser's own order, secured by mortgage, &c.

6. Eight lots of ground, with all the buildings and improvements thereon, in the suburb St. Mary, in the square comprised between Old Levee, Bienville, Custom-house and Chartres streets. The admeasurement and particular description being set forth on the schedule annexed to assignee's petition, and the particular kind of buildings upon each lot. Terms as above set forth in No. 5.

7. Eight lots of ground, with the buildings and improvements thereon, situate in the suburb St. Mary, in the square comprised between Tchapitoulas, Gravier, New Levee and Poydras streets; the particular admeasurement of said lots, and the description of buildings thereon, set forth in said schedule.

Terms for the above, one-third payable in cash, the balance in equal instalments, at 6, 12, 18, and 24 months credit, with notes satisfactorily endorsed, and secured by mortgage on the property.

8. One lot of ground, with the two-story brick store thereon, situate in the suburb St. Mary, in the square comprised within Poydras, New Levee, Gravier and Tchapitoulas streets, as particularly described in said schedule.

*Terms.* One-third payable in cash, the balance in equal instalments at 6, 12, 18, and 24 months credit, in notes of the purchaser, satisfactorily endorsed, secured by mortgage, &c.

9. A certain lot of ground, with the two-story brick store thereon, situate on the eastern side of Chartres street, between Custom-house and Canal streets.

*Terms.* One-third payable in cash, the balance in equal instalments at one and two years credit from the day of sale, in notes satisfactorily endorsed, and secured by mortgage, &c.

10. Two lots of ground, with the buildings thereon, situate in the suburb St. Mary, in the square comprised within Camp, Julia, St. Charles, and St. Joseph streets; the admeasurement of said lots [are] particularly set forth in said schedule. Terms to be the same as specified in No. 8.

11. A certain lot, situate in the faubourg St. Mary, and designated by No. 40, situate upon South street of the market, between New

Levee and Tchapitoulas streets, together with the two-story brick store and dwelling thereon.

*Terms.* One-third of the purchase money payable in cash, the balance in equal instalments at 6, 12, and 18 months credit; notes satisfactorily endorsed and secured by mortgage.

12. Six slaves, their ages and description particularly set forth in said schedule.

Sale of all the aforesaid property, it is suggested by the assignee, to commence on Wednesday, the 15th day of February, at 12 o'clock, noon, and if not completed, to continue on the following days. Place of selling, Banks' arcade, where particular and detailed plans of the property will be exhibited.

It is therefore ordered, that a hearing of this petition be had on Friday, the sixth day of January, at 10 o'clock, A. M., when and where the creditors of the bankrupt, and all other persons in interest are specially notified to appear, and shew cause, if any they have, why the prayer of the petitioner should not be granted, and the property sold in the manner and form and upon the terms suggested by him, as being most conducive to the interests of the estate; all of which are more particularly described and set forth in the schedule annexed to his petition filed. By order of court.

(Signed) N. R. JENNINGS, *Clerk*
*United States district court.*

CLERK'S OFFICE, *June 2d*, 1845.

I certify, that the annexed notice of publication in the bankruptcy of Thomas Banks was published according to the rules of the court in two of the newspapers of this city, to wit, the Picayune and Tropic.

(Signed) N. R. JENNINGS, *Clerk.*

*Doc't marked* 3, *is receipted for thus.*

Received, the rules of the United States district court, filed in evidence in this case, marked as No. 3. 10th July, 1845.

(Signed) N. R. JENNINGS, *Clerk*
*United States district court.*

*Doc't marked* 4. *Rules of court, filed in evidence 2d June*, 1845.

United States district court, sitting in bankruptcy, in and for the district of Louisiana.

*Thursday, May 1st*, 1845.

The court met pursuant to adjournment.
Present, the honorable Theo. H. McCaleb.

In the bankruptcy of Thomas Banks.

F. B. CONRAD, and L. Peirce, Esq'rs,
vs.
G. GAVIN, deputy marshal, and the City Bank.

On motion of L. Peirce and F. B. Conrad, esq'rs, of counsel for Wm. Houston and others, purchasers of certain property, being por-

tions of the property known as "Banks' arcade," sold by the marshal at public auction in obedience to, and by virtue of, a decree of this honorable court rendered in the bankruptcy of Thomas Banks, and on suggesting to the court that the return of notice of the assignee's petition to sell said property, filed on the day of , has been incorrectly made, it is ordered by the court that George Gavin, deputy marshal, who made such return, do shew cause on Friday morning, the 2nd inst., at 9 o'clock, A. M., why he should not amend his said return in accordance with the facts of such service, and that notice hereof be given to the City Bank of New Orleans, to the end that said bank shew cause, if any it has or can, why such an amendment should not be made, and why the clerical error in said return, by which Thursday, the 5th January, 1843, should not likewise be corrected, and that said City Bank do produce in court on the trial hereof the original of said notice to sell, which was served upon them by said deputy marshal.

*Monday, May 19th*, 1845.

The court met pursuant to adjournment.
Present, the honorable Theo. H. McCaleb.

F. B. CONRAD, assignee, &c., of Thomas Banks,
vs.
THE CITY BANK.

*Rule.*

The court having taken this rule under consideration, delivered this day its judgment thereon in the following words:

The rule is discharged as to the alteration made in the notice by the deputy clerk, this court being of opinion that the deputy clerk has no authority to make such alteration; that as to the amendment of the return of service made by the deputy marshal, this court is of opinion that the deputy marshal may amend his return so as to conform to the truth, and in doing so he acts at his own peril.

*Clerk's Office.*

I, N. R. Jennings, clerk United States district court for the district of Louisiana, do hereby certify, that the foregoing are true and correct copies from the minutes of this court.

Witness my hand and the seal of this court this twenty-second day of May, eighteen hundred and forty-five.

[SEAL.] (Signed) N. R. JENNINGS, *Clerk*.

*Continuance.*

CITY BANK OF NEW ORLEANS,
vs.
WM. HOUSTON et als.
No. 6611.

This case came on this day for trial before the court, as continued from Friday, last past. W. C. Micon and R. M. Wilde, for plaintiffs; F. B. Conrad for defendants.

After hearing the arguments of counsel, the same was continued to to-morrow morning at ten o'clock.

Extract from the minutes, June 2nd, 1845.

*Under consideration.*

CITY BANK OF NEW ORLEANS, vs. WM. HOUSTON et al. } No. 6611.

This case came on this day for trial before the court, as continued from yesterday. W. C. Micon and R. M. Wilde, for plaintiffs; F. B. Conrad and C. M. Randall, for defendants.

After hearing arguments of counsel, the court took the same under consideration.

Extract from the minutes, June 3rd, 1845.

*Transcript of suit from the first district court, filed* 11*th June*, 1845.

STATE OF LOUISIANA,

*First judicial district court.*

CITY BANK OF NEW ORLEANS, vs. THOMAS BANKS and others. } No. 22,888.

*Petition, filed* 21*st November*, 1843.

To the honorable the district court, for the first judicial district of Louisiana, the petition of the City Bank of New Orleans, a body corporate under the laws, and domiciliated in said city, respectfully shews:

That on or about the thirtieth June, eighteen hundred and thirty-seven, your petitioner loaned to Thomas Banks and Charlotte Fogarty, his wife, in New Orleans, the sum of fifty-five thousand dollars, in acknowledgment whereof the said Banks and wife executed and delivered to petitioner their certain bond or obligation, promising in solido to pay the said amount to petitioner in twelve months from the aforesaid date of said loan; and to secure the said payment, the said Banks and wife, on the day aforesaid, by act before H. B. Cenas, esq., notary public, granted to petitioner a special mortgage upon certain valuable real estate in said city, particularly described in said act, and commonly known as "Banks' arcade;" and in said act, among other stipulations, the said Banks and wife agreed to pay interest for said loan at the rate of eight per cent. per annum; all of which will fully appear by reference to the said bond and mortgage, copies of which are annexed for reference; and upon the said loan such payments only have been made as to reduce the amount due to the sum of forty-four thousand dollars, besides interest at eight per cent. per annum from the thirtieth of June, eighteen hundred and forty-two, until paid, and costs of protest; of which balance, payment has been demanded of said parties and refused.

Petitioner further shews, that on or about the thirtieth day of July, eighteen hundred and forty-two, the said Thomas Banks made his application to be made a bankrupt to the United States court for the

eastern district of Louisiana; that he was so decreed, and afterwards such proceedings were had in the premises that he was discharged in said court, and received his certificate of such discharge; but your petitioner avers that in obtaining *that in obtaining* said discharge, the said Thomas Banks was guilty of fraud and wilful concealment of his property and rights of property, contrary to the provisions of said act; and your petitioner here gives notice that the said defendant, if the same be pleaded in bar of this suit, will be impeached for the grounds herein set forth, to wit:

1st. That a short time preceding the said application, the said Banks made simulated transfers of his property, by certain deeds of acknowledgment and donations, hereinafter more particularly specified, in favor of Edmond W. Wells and Ann Fogarty, his wife; also the niece of said Mrs. Charlotte Banks.

2d. That within nine months preceding his said application the said Banks made large sales of real and personal estate to divers persons, among whom are John Thompson, Victor Peyrea, Wm. Whittla, George Allen, Wm. Robinson, f. m. c., F. B. Conrad, and others, for which he received in cash and negotiable promissory notes, payable to him or his order, the sum of forty thousand dollars and upwards.

3rd. That the annual income of said Banks, arising from his real estate, amounted, for several years preceding his failure, to the sum of from one hundred thousand to seventy-five thousand dollars, and that in the year preceding his application he received, for the rents of his said estate, the sum of seventy-five thousand dollars or upwards.

4th. That at the date of said application a great part of his said property was under leases, to expire on or about the 1st day of November then next succeeding, and that the said Banks had received from his tenants promissory notes to himself or order, payable and falling due on or after the date of his said petition in bankruptcy, to the farther amount of twenty thousand dollars and upwards.

5th. That within the year preceding the said application, the said Thomas Banks, well knowing the disordered and embarrassed conditions of his affairs, and during the whole period intending and contemplating to take the benefit of the bankrupt laws of the United States, executed divers long leases in favor of sundry persons, and especially in favor of J. S. Pritchard, Norman Steele & Co., J. Allen, J. Francisco, Mitchell & Phillips, J. Hewlett, W. H. Whitemarsh, and H. W. Haines, to the most valuable part of his real estate, which leases were made for respective terms of two, three, four, and five years, all expiring long after the intended date of his petition in bankruptcy, and in consideration of which he received from said several lessees promissory notes, payable to him or to his order, for the entire term of said respective leases, and amounting in the whole to the sum of seventy-five thousand dollars and upwards.

6th. That for the year preceding to the petition in bankruptcy of said defendant, and notwithstanding the large receipts in cash and promis-

sory notes, amounting in all to the sum of two hundred thousand dollars, the said Thomas Banks paid no part, or either the principal or interest, of his debts; that, in his said bankruptcy, he surrendered no part of the cash and promissory notes received by him as aforesaid; and your petitioner therefore charges that the said cash and notes, or the proceeds thereof, were concealed by said Banks.

And petitioner further alleges, that, notwithstanding the said bankruptcy of said defendant, and ever since the filing of his said petition, he has remained in the enjoyment of real and personal estate to a considerable amount, and that he is now the owner thereof, although the title of the same is nominally vested in other persons; and among the properties so held, and which petitioner alleges still to belong to said defendant, are the following:

1st. A lot, with improvements thereon, situated in the Second Municipality of New Orleans, in the square bounded by Robertson, Jackson, Villere, and Common streets, having a front of thirty feet on Jackson street, by one hundred feet deep; which property the said Banks acknowledged by act before J. B. Marks, notary public, of date twenty-ninth November, eighteen hundred and forty-two, to belong to the said Edmund W. Wills, and to have been purchased with his funds, although the title to the same had, before that time, stood only in the name of said Banks.

2nd. Two lots of ground, with improvements thereon, situated in the same municipality, in suburb Saulet, in the square bounded by Nayades, Clio, Prytannia, and Calliope streets; No. one forming the corner of Nayades and Calliope streets, and measures twenty-six feet seven inches and five lines front on Nayades street, by a depth of one hundred and twenty feet on Calliope street; No. two, adjoining the above, fronting on Nayades street, and having equal dimensions with No. one. Also certain slaves—Maria, aged about 43 years, Ben, aged 32 years, and Mary, a griffe, aged about 29 years; which real estate and slaves were conveyed by the said Banks, by an act of donation of date May second, eighteen hundred and forty-two, passed before J. B. Marks, notary public, in favor of the said Ann Fogarty, wife of said Wells. Passed an act of sale of the same property, to wit, the said land and slaves, to one Samuel Lindsey Forgay, of New Orleans, for the nominal consideration of four thousand five hundred dollars; but your petitioner charges that, notwithstanding the said conveyances, the said property still belongs to said Banks, and is held by said Forgay for the use of said Banks.

3d. A certain lot of ground, with buildings and improvements in the same municipality, situated in faubourg Delord, comprised between St. Paul, Girod, St. Peter, and Julia streets, and measuring eighty-five feet front on St. Paul street, by one hundred and twenty-nine feet six inches deep, being the same conveyed by said Banks to one William Robinson, f. m. c., also of New Orleans, by act before J. B. Marks, notary public, the sixteenth May, eighteen hundred and forty-two, for

the nominal consideration of ten thousand dollars, but really held by said Robinson for the use and benefit of said Banks.

4th. Two lots of ground in the same municipality and suburb with the last, with the buildings and improvements thereon, being the same designated as the No. 329 and 330, on a plan of R. Delafield, dated in March, 1832, deposited in the office of G. R. Stringer, notary public, (now F. Grima, esq.,) said lots joining each other, and measure together about eighty-five feet front on Covington landing, twenty-seven feet front on Pensacola landing, by one hundred and ninety-six feet deep, and about fifty feet wide in the rear; the said property being the same conveyed by act before J. B. Marks, of date twenty-fourth May, eighteen hundred and forty-two, from said Banks to one William Whitla, also of New Orleans, for the nominal consideration of seven thousand dollars, but really held by him for the use of said Banks.

5th. Two certain lots of ground situated on the batture, in front of suburb Livaudais, in the parish of Jefferson, designated by the letters "A" "C" and "A" "D," on the original plan of said fauboug, deposited in the office of G. R. Stringer, (now F. Grima,) being part of the square comprised between Washington, Sixth, Levee, and New Levee streets; said lots having each in English measure forty-six feet front on Levee street, between Washington and Sixth streets, and have in front to the river each forty-four feet nine inches and five lines; the depth of said lots A C, from Levee street to the river, being two hundred and fifteen feet, and of lot "A" "D" about an equal depth; together with all the rights of batture or alluvian belonging to said lots, which property was conveyed by said Banks to one George Allen, by act before J. B. Marks, notary public, on the first June, eighteen hundred and forty-two, for the nominal consideration of ten thousand dollars, but in reality held by said purchaser for the use of said Banks.

6th. A certain lot of ground in suburb Lacourse, in the said second municipality, together with the buildings and improvements thereon, designated as number one, on a plan drawn by A. D. Henricourt, dated sixth May, eighteen hundred and thirty-five, and deposited in the office of H. B. Cenas, notary public; said lot measuring about thirty-two feet front on Magazine street, by one hundred and twenty-seven feet between parallel lines and front on Edward street, which lot was conveyed by the Commercial Bank of New Orleans to the said George Allen, by act before H. B. Cenas, notary public, on the twentieth October, eighteen hundred and forty-two, for the price of fifteen hundred and fifty dollars cash; and petitioner avers that said lot was really purchased with the money which belongs to the said Thomas Banks, though held in the name of said Allen.

7th. Seven lots of ground in the said municipality, and in suburb designated as Nos. 126, 150, 151, 152, 153, 154, and 269, on a plan drawn by W. T. Thompson, surveyor, dated sixth January, eighteen hundred and forty-three, deposited in the office of J. B. Marks, notary public. Lot number 126 measuring twenty-six feet front on Julia street landing, one hundred and six feet deep on the side

next to St. John Street, and seventy-seven feet on the side next to Circus street; lots numbers 150, 151, 152, 153, and 154, measure each about twenty-six feet front on Julia street landing, by eighty-five feet deep between parallel lines; lot 154 forming the corner of Julia street landing and St. Paul street, and lot number 269 forms the corner of Florida landing and Magnolia street, having twenty-five feet front on Florida landing, by one hundred and twenty feet deep; the said property having been sold by F. B. Conrad, esquire, assignee in bankruptcy of the estate of said Thomas Banks, to J. B. Marks, by act before William Christy, notary public, for the sum of three thousand and twenty dollars cash; but, as petitioner charges, paid for by said Marks with the money of said Banks, and held for his use.

8th Certain lots in the villages of Carrollton and Greenville, of which a more particular description will be hereafter filed. Twenty shares of Merchant's Insurance Co. stock, a pew in Christ's church, and certain articles of household furniture, and a barouche, all purchased of said assignee by the said J. B. Marks, but in fact paid for with the money of said Banks, and held for his use.

And petitioner charges that all the property herein above described, under the numbers from one to eight inclusive, have been since the bankruptcy of said Thomas Banks, and still are, in the use, occupation, and enjoyment, and under the control of the said Thomas Banks; that he has made large and expensive improvements on the same; that the said properties belong to him, and are answerable for his debts; and that in addition to the foregoing the said Banks owns other properties, and has bought and sold real estate to a large amount since his said bankruptcy.

Petitioner therefore prays that the said Thomas Banks and Charlotte Fogarty, his wife, be cited to appear and answer this petition; that they be condemned in solido to pay to petitioner the said sum of forty-four thousand dollars with interest, at eight per cent. per annum, from the thirtieth June, eighteen hundred and forty-two, until paid, and with the rank, privilege, and special mortgages upon the property known as "Banks arcade," and particularly described in said act of mortage, of which an authentic copy is annexed, passed as aforesaid, *passed as aforesaid*, and on the day aforesaid, by H. B. Cenas, esq., notary public.

Petitioner further prays that the said Edward W. Wells, Ann Fogarty, his wife, Samuel Lindsey Fogarty, William Robinson, f. m. c., William Whitla, George Allen, and Joseph Benzaken Marks, all of New Orleans, be cited to appear and answer this petition; that the property herein above described, and held as aforesaid in their respective names, be decreed to belong to the said Thomas Banks and wife, and liable to the judgment and execution which shall be rendered against them in this case; and petitioner prays for general relief in the premises.

(Signed) LOCKETT & MICON,
*Attorneys.*

*Supplemental petition, filed 30th November,* 1843.

To the honorable the district court of the first judicial district.

The petition of the City Bank of New Orleans, filed as supplementary to the suit of said Banks vs. Thomas Banks and others, respectfully shews:

That in said original petition the description of certain property held in the name of J. B. Marks, and alleged to be for the use of said Thomas Banks, was omitted. Petitioner now avers that the description of said property is as follows:

Three lots of ground in Carrollton, in the parish of Jefferson, situated in the square bounded by the public road, Cambrosme, Levee, and Madison streets; said square being designated on the original plan of said town by the letter "A," and said lots being also marked numbers thirteen, fourteen, and fifteen, and measuring each (in English measure) thirty-four feet eight inches and three lines on the public road, by one hundred and twenty-five feet deep between parallel lines; and a square of ground situated in Greenville, also in said parish, designated in the original plan of said town, as number thirty-one, containing twenty lots, from number one to number twenty inclusive; said square having a front of three hundred feet on each of the streets Chesnut and Walnut, and two hundred and forty feet on each of the streets Ferdinand and Oliver, by which it is bounded.

And petitioner prays for judgment in conformity with the prayer of the said original petition, and that the said Thomas Banks and the said J. B. Marks be cited to appear and answer this supplemental petition.

(Signed) LOCKETT & MICON,
*Plaintiffs' attorneys.*

*Order, filed 30th November,* 1843.

Let this supplemental petition be filed, 30th November, 1843.

(Signed) A. M. BUCHANAN, *Judge.*

*Order of discontinuance, filed December 7th,* 1843.

And now come into court the plaintiff, by Lockett and Micon, esqrs., their counsel, and discontinue so much of the said original demand and petition as affects or prays any decree of this court touching the property fronting on Jackson street, being the first described in the said original petition as property acknowledged by Thomas Banks, per act before J. B. Marks, notary public, to belong to the said E. W. Wells.

*Supplemental petition, filed 7th December,* 1843.

To the honorable the district court for the first judicial district of Louisiana.

The supplemental petition of the City Bank of New Orleans, to the suit of said Bank vs. Thomas Banks and others, respectfully represents:

That since the institution of said suit petitioner has discovered that the property described in the said original petition as the fourth, to wit:

Two lots of ground, &c., the title whereof was in the name of the said William Whitla, has been transferred by notarial act from the said William Whitla to the said George Allen, one of the said defendants; and petitioner avers that the said sale was also colorable only, and without any real consideration, and that said property is still the property of said Thomas Banks, and held by the said George Allen for his use and benefit.

Wherefore, petitioner prays that the said Thomas Banks, Wm. Whitla, and George Allen be cited to appear and answer this petition, and that judgment be rendered touching said property in conformity with the prayer of said original petition.

Petitioner further discontinues so much of their said original demand as affects or prays any decree of the court touching the property fronting on Jackson street, being the first described in the original petition as property acknowledged by an act before J. B. Marks to belong to E. W. Wells.

(Signed) LOCKETT & MICON,
*Plaintiffs'. attorneys.*

*Order, filed December 7th*, 1843.

Let the supplemental petition be filed. 7th December, 1843.
(Signed) A. M. BUCHANAN, *Judge.*

*Exception and answer of George Allen. Filed 11th December*, 1843.

CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS et als.

First judicial district court of Louisiana.

Into the said court, by his attorney, comes George Allen, cited as defendant in the above case, and pleads in bar to this suit, as against the above named Thomas Banks and this defendant, the discharge and certificate of said Banks, and excepts to plaintiff's impeachment thereof, for this, that plaintiff had full notice and opportunity to oppose said discharge in the United States district court for the eastern district of Louisiana, holding sessions in bankruptcy, and not having then and there so opposed, cannot do so afterwards, except upon grounds and facts discovered since the hearing for a discharge; and as such grounds and facts are not alleged in plaintiff's petition and supplemental petitions, they cannot be proven. Defendant Allen also excepts, for this, that such suit as this can only be brought by the assignee, as the proceedings in the bankruptcy of said Banks are not yet completed; and if the property described in plaintiff's petition belonged, as plaintiff alleges, to said Banks, (which this defendant denies,) it vested, by § 3 of the bankruptcy law, in the assignee.

If the above pleas and exceptions be overruled, then this defendant, answering, denies all and singular the allegations in said petition and supplemental petitions against said Banks, and against this defendant, and prays for general relief and costs; and that the pleas, exceptions, and answers filed by said Banks be deemed part hereof.

(Signed) M. M. COHEN, *of counsel for Allen.*

*Exception and answer. Filed December 12th*, 1843.

THE CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS and als.

In the district court.

Thomas Banks, one of the defendants in the above entitled suit, now comes into court by his attorney, and for his exceptions and answer to the plaintiff's petition, says, that the said plaintiff cannot have and maintain the present action against this respondent, and for the following reasons, to wit:

1st. Because this respondent has applied for and obtained the benefit of an act of the Congress of the United States of America, entitled "an act to establish a uniform system of bankruptcy throughout the United States," approved 19th August, 1841; that an assignee has been duly appointed under said law, who represents all the creditors of this respondent, and who can alone prosecute an action like the present before the United States district court for the eastern district of the State of Louisiana, sitting in bankruptcy; that therefore the present plaintiff has no right to institute said action, nor can this honorable court entertain jurisdiction thereof.

2nd. Because the judgment of discharge and certificate thereof having been duly granted to this respondent by the said United States district court, sitting as a court of bankruptcy, operates as a full and complete discharge from all debts, contracts, and other engagements proveable under said bankrupt law, which discharge and certificate is now specially plead in bar, and as peremptory exception to the present action.

And this respondent further avers and contends that this honorable court cannot entertain jurisdiction either to inquire into the validity of said judgment of discharge and certificate, or into the pretended acts of fraud and concealment, of which the plaintiff seeks to impeach the same; that the plaintiff was a party to the said proceedings in bankruptcy, and is bound by the discharge therein rendered.

Wherefore, this respondent respectfully prays that the plaintiffs' petition be dismissed with costs; and in case the court should be of opinion that the foregoing exceptions ought to be overruled, then this respondent answering to the merit says, that he denies all and singular the allegations in said petition contained, and he expressly avers that all the charges of fraud and concealment set forth in said petition are false and slanderous; that the prosecution of the present action is malicious; and this respondent reserves to himself the right to institute his action in damages against the plaintiff for said malicious prosecution.

Wherefore, this respondent respectfully prays to be hence dismissed with costs, and he prays for all such other and further aid, relief, and remedy, as the nature of his case may require and the law will permit; and he will ever pray, &c., &c.

(Signed.) C. ROSELIUS, *for Def't.*

*Exception and answer, filed* 13*th December,* 1843.

CITY BANK OF N. ORLEANS,
vs.
THOMAS BANKS & als.

1st judicial court of Louisiana. Into the said court, by his attorney, comes J. B. Marks, cited as defendant in the above case, and pleads in bar to this suit, as against the above named Thomas Banks and this defendant, the discharge and certificate of said Banks, and excepts to plaintiff's impeachment thereof, for this, that plaintiff had full notice and opportunity to oppose said discharge in the United States district court for the eastern district of Louisiana, holding [sessions in bankruptcy; and not having] then and there so opposed, cannot do so afterwards, except upon grounds and facts discovered since the hearing for a discharge; and as such grounds and facts are not alleged in plaintiff's petition, they cannot be proven. Defendant J. B. Marks also excepts for this, that such suit as this can only be brought by the assignee, as the proceedings in the bankruptcy of said Banks are not yet completed, and *in* the property described in plaintiff's petition belonged as plaintiff alleges to said Banks, (which this defendant denies,) is vested by § 3 of the bankrupt law, in his assignee.

If the above pleas and exceptions be overruled, then this defendant, answering, denies all and singular the allegations in said petition against said bankrupt and against this defendant, and prays that the pleas, exceptions, and answer of said Banks may be taken and deemed a part hereof, and for costs and general relief.

(Signed,) M. M. COHEN,
*Of counsel for J. B. Marks.*

*Answer of Mrs. Banks, filed* 4*th January,* 1844.

CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS & als.
In the district court.

Charlotte Fogarty, wife of Thomas Banks, and by him duly authorized and assisted in this behalf, now comes into court by her attorney, and for exceptions and answer to the plaintiff's petition and supplemental petition, says, that she adopts as her own the exceptions and answer filed in this case by her husband and independent Thomas, so far as the same are applicable to her case; wherefore this respecfully prays for general relief; and she will ever pray, &c., &c.

(Signed,) C. ROSELIUS, *Attorney.*

*Answer of Thomas Banks, filed* 4*th January,* 1844.

CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS and others.
In the district court.

The defendant Thomas Banks now again comes into court by his attorney, and for exception and answer to the supplemental petition herein filed, says, that he persists and reiterates his exceptions and answer to

the original, and adopts the same as applicable to said supplemental petition. Wherefore he prays to be hence dismissed with costs, and for general relief; and he will ever pray, &c., &c.

(Signed) C. ROSELIUS, *Attorney.*

*Exception and answer of S. L. Forgay, filed 5th January*, 1844.

THE CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS et als. } District court.

Samuel L. Forgay, one of the defendants in this suit, now comes into court by his attorney, and for exceptions to the petition and supplemental petition filed in this case, pleads the several exceptions filed in this case by his co-defendants Thomas Banks and George Allen, and prays therefore that the petition may be dismissed. But if the above exceptions be overruled, then this defendant, answering, denies all and singular the allegations contained in the petition, so far as the same may in any way affect his right, and avers that his title is perfect.

(Signed) R. HUNT, *for Defendant.*

*Exception and answer of Wells and wife, filed 5th January*, 1844.

THE CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS & als. } District court.

Edward W. Wells and Ann Fogarty, his wife, two of the defendants in this suit, now come into court by their attorney, and for exceptions to the petition and supplemental petition filed in this case plead the several exceptions filed in this case by their co-defendants Thomas Banks and George Allen, and pray therefore that the petition may be dismissed.

(Signed) R. HUNT, *for Defendants.*

But should these exceptions be overruled, then defendants, answering, deny all and singular the allegations contained in the petition, so far as the same may in any manner affect these defendants' rights, and allege that they have good titles, and acquired the property (claimed as that of T. Banks) in good faith, and for a valuable consideration, as set forth in the titles.

(Signed) R. HUNT, *for Defendants.*

*Judgment on exception, rendered 24th January*, 1844.

The court having taken this case under consideration on the exceptions, do, for the reasons assigned in the written opinion and judgment this day delivered and on file, adjudge and decree, that as regards the defendants Wells and wife, Forgay, Robinson, and Whitla, this suit be dismissed; and as regards the defendants Banks and wife, Allen and Marks, the exception be overruled.

*Supplemental answer and prayer for jury, filed 29th Jan'y*, 1844.

CITY BANK
vs.
T. BANKS & al. } District court, Buchanan, judge.

The defendants, Allen and Marks, now again come into court, and beg leave to file this their supplemental answer, in which they respectively represent, that they are desirous to have the issue joined in this case tried by a jury. Wherefore they respectfully pray that this case be tried by a jury, and they pray to be hence dismissed with costs, and for general relief.

(Signed) M. M. COHEN,
*Of counsel for Allen and Marks.*

*Order of discontinuance, recorded 3d February*, 1844.

On motion of Lockett and Micon, esqrs., of counsel for the plaintiff, it is ordered that this case be discontinued as to the defendants Marks and Allen.

*Judgment, rendered 20th July*, 1844.

The court having taken this case under consideration, do, for the reasons assigned in the written opinion and judgment this day delivered and on file, adjudge and decree, that the City Bank of New Orleans recover from the defendants Thomas Banks and Charlotte Fogarty, his wife, in solido, the sum of forty-four thousand dollars, with interest thereon, at eight per cent. per annum, from thirteenth June, eighteen hundred and forty-two, until paid, and costs of suit.

Judgment rendered 20th July, 1844; signed 1st August, 1844.

(Signed) A. M. BUCHANAN, *Judge*.

*Reasons for judgment, filed 20th July*, 1844.

CITY BANK OF NEW ORLEANS
vs.
THOMAS BANKS and others. }

This is an impeachment of the certificate of discharge of Thomas Banks, under the bankrupt act of eighteen hundred and forty-one, for fraud and wilful concealment of property.

The question of jurisdiction having been already disposed of upon the exception, the only question remaining is one of fact.

The frauds and concealments charged may be ranged under the following heads:

1st. That money and notes were in Banks' possession at the time of his failure, which he did not put upon his schedule.

2d. That he had made a simulated donation of lands and slaves to Mrs. Wells, on the second May, eighteen hundred and forty-two, in contemplation of his bankruptcy, (which took place on the thirtieth July, eighteen hundred and forty-two,) and for the purpose of defrauding his creditors.

3d. That he made a like simulated and fraudulent conveyance of ground and buildings to William Robinson, a free colored man, on the sixteenth May, eighteen hundred and forty-two.

4th. That he made a like simulated and fraudulent conveyance, on the 24th May, eighteen hundred and forty-two, to William Whitla.

5th. That he made a like simulated and fraudulent conveyance, on the first June, eighteen hundred and forty-two, to George Allen.

It is furthermore charged in the petition, that sundry pieces of property, which have been bought by George Allen and Jos. B. Marks since the 13th July, 1842, were in reality bought with Thomas Banks' money and for his account, and are liable to be taken in execution of the judgment which plaintiff asks against the said Thomas Banks. This forms the subject of a revocatory demand, which is also contained in the present petition, and to which not only Banks but George Allen and Jos. B. Marks, with others, are parties; but the suit having been discontinued as to all the parties defendant but Banks and wife, I am spared the examination of this branch of the case.

A third branch of the subject will be the liability of Mrs. Banks, wife of Thomas Banks, to pay the bond subscribed by her jointly with her husband, and which bond forms the basis of plaintiff's claim.

I will proceed to investigate the proof of *under* each allegation of fraud in its order.

1st. Had Banks money and bills receivable in his hands, at the time he filed his schedule in the bankrupt court, which he did not put upon that schedule?

In order to establish this ground, the plaintiffs have introduced in evidence a great number of leases of property made by Thomas Banks to various individuals within the year previous to his failure. There has been also some evidence given of money received by him within the same time. It appears from the documents in evidence that the uniform practice of Mr. Banks was, to take from his tenants, at the moment of signing their leases, their promissory notes in a negotiable form, by monthly or quarterly, and in one or two instances, by two monthly instalments, for the whole rent that would have to accrue during the whole period of their leases, be the same more or less.

The amount of those rent notes received by Banks under the leases in evidence within the year previous to his failure is correctly enumerated by the counsel of plaintiffs, in a list which he has taken the trouble to make out, and which I annex hereto; this list of rent notes amounts to ninety-four thousand three hundred and twenty-six dollars; to that amount the counsel adds nine thousand dollars as the probate amount of leases of other pieces of property sold by Banks' assignee, but of which the leases have not been given in evidence; although this estimate of nine thousand dollars would not seem immoderate, yet as it is my desire to proceed upon strict and positive evidence alone, I will reject it.

Then follow two items of rent notes collected besides the above, amounting to seven thousand five hundred and fifty dollars; next cash

received from Mr. Conrad by Thomas Banks within the year preceding his failure for property sold, twelve thousand dollars. Next follow three items of rent notes belonging to the leases in evidence, but which it is assumed must have been in Banks' possession at the time of his failure.

Five of the notes of H. W. Haynes, and all of those of A. W. & R. M. Haynes, as charged in these items, were certainly in Banks' possession at the time of his failure; those two items amount to fourteen thousand five hundred and fifty dollars. Total bills receivable and cash proved to have come into Thomas Banks' hands within the year previous to his failure, one hundred and twenty-eight thousand four hundred and twenty-six dollars.

It is proved by Mr. Delap, and the vouchers referred to by him, that there was paid by Banks, in the years eighteen hundred and forty-one and eighteen hundred and forty-two, the sum of fifteen thousand nine hundred and thirty-six dollars; and further, in discounts to Atchafalaya Bank within the same time, twelve hundred and twenty-six dollars.

Seventeen thousand one hundred and sixty-two dollars.

There has been also much evidence given by defendants as to the very large amounts proved by Mr. Banks in building, shaving, &c., for many years back. This evidence I regard as entirely immaterial to the issue.

It is also in proof that large amounts of the rent notes in question were endorsed by Banks to R. C. Cammack, George Allen, L. S. Forgay, and Commagere; but it is assumed with much reason, by the counsel of plaintiff, that Banks must have received something for such assignments, and that the very fact of his endorsing them to other persons proves that he has realized their proceeds.

To this, however, the defendants 'counsel objects that we have nothing to do with money or assets that may have come into Banks' hands previous to his bankruptcy, unless it is shown that they were in his hands at the moment of his bankruptcy. I think this doctrine is in the main correct. It is true, as observed by the counsel of plaintiff, that circumstantial evidence may be stronger proof than positive testimony; yet, to have that effect, the circumstances must be numerous, unequivocal, and concurring directly to the same point; I do not find enough in the present case to enable me to say, for instance, that Mr. Banks had in his possession, when he filed his schedule in July, eighteen hundred and forty-two, the twelve thousand dollars of cash which he had received of Mr. Conrad for property sold to the latter in the January previous. I do not find in the record circumstances that enable me to say that Mr. Banks had in his possession, when he filed his schedule, the money, be it more or less, which he had received from Mr. Cammack for the notes of Mitchell and Phillips, or from Mr. Forgay for the note of Mr. Hewlett.

The record however does show, that shortly before this case was tried, and some time after the suit was brought, Mr. Banks handed over to his assignee rent notes of his former tenants, being a part of those enu-

merated above, amounting to about thirty thousand dollars of nominal value, and which he had not put upon his schedule. This fact is admitted; but it is said the non-production of those notes was not a wilful concealment in the words of the statute. In support of this view of the case, much evidence has been given about the extraordinary confusion and want of method which has always characterized Mr. Banks in his business.

It appears that he never kept any accounts except in his head, and that his friends were always telling him that he would ruin himself by his carelessness. It is not a little extraordinary that Mr. Banks should have acquired the immense amount of property which he certainly possessed for many years, if he was so utterly incapable of taking care of his own business, as has been argued from the evidence given on the point.

But the truth is, those men who keep their accounts in their head are generally distinguished by the retentiveness of their memories. With regard to these particular notes given by Mr. Banks to his assignee, Mr. Conrad, in January last, it appears that his memory was pretty good, for in giving them to him he informed him that they were the same notes which he had spoken to him about in the January preceding, and he had also spoken to him about the same notes twice in November or December, eighteen hundred and forty-three; yet, strange to say, when Mr. Banks is questioned about a portion of those very notes, those of Pritchard, by the Bank of Louisiana, in certain interrogatories propounded in the court early in July, eighteen hundred and forty-three, he answers on the 6th November, eighteen hundred and forty-three, two weeks before the institution of the present suit, that he had not the said notes, nor did he know where they were; this appears really to be a very extraordinary memory indeed, which seems to recollect with sufficient exactness a fact unsolicited, and even to repeat the same communication again and again in one quarter; and yet, when from another quarter the attention is called to the same fact in the solemn form of interrogatories on facts and articles, is found to be entirely oblivious.

It is very possible, nay probable, that Mr. Banks supposed he had surrendered property enough to pay his debts, but that did not excuse him from the obligation of surrendering all his property. And if Mr. Banks was not aware of the existence of the seventy-two notes of the tenants mentioned in Mr. Conrad's evidence, amounting to thirty-two thousand dollars and upwards, when he filed his schedule on the thirtieth July, eighteen hundred and forty-two, I do not find any attempt at explanation in the evidence, of his coming to the knowledge of the existence of those notes in July, eighteen hundred and forty-three, when he first communicated the fact to his assignee. The suit of the Bank of Louisiana against Banks and others, which had for [its] object to get possession of a portion of those notes, was brought in the court on the fifth July, eighteen hundred and forty-three. I do not find the citation among the papers, but it was in all probability

served within a few days after it was issued; if so, it was served in July, 1843. In the same month Banks communicated to his assignee, for the first time, that he had certain notes in his possession which belong to his creditors. Is this circumstance entirely accidental?

After weighing his evidence most carefully, and comparing it with the rest of the case, I cannot acquit Mr. Banks of a knowledge that he had those bills, receivable at the time he filed his schedule in the United States court, and of the wilful concealment of the same. The conclusion at which I have arrived on this charge, makes it unnecessary for me to travel through the very voluminous evidence bearing upon the other charges of fraud embraced in the petition.

There only remains to be examined the defence set up by Mrs. Banks. This defendant has filed an answer, in which she adopts as her own all the pleas set up by the answer of her husband, so far as they are applicable to her case; among these pleas is that of the general denial. From the evidence introduced by the defendants in relation to the origin of the debt which forms the object of this suit, it is clear that Mrs. Banks intends to rely upon the provisions of our law, which prohibit a married woman from being security for her husband. The statement filed by Mr. Palfrey, cashier of the City Bank, shews that the bond sued upon was not, as it purports to be on its face, for a loan of money made to Thomas Banks by the City Bank, by notes, bills of exchange, &c., then part due and protested, with interest and damages on the same.

The supreme court has held on many occasions that the wife cannot bind herself as security for her husband, and that the real nature of her contract, even when it purports to be other than one of suretyship, may be shown by parol. See, among other cases, that of Pilie vs. Patin, 8th La. Rep., p. 692. An exception is found to this general rule in the charter of several of our banks, and among the rest in that of plaintiffs.

By the sixth section of the City Bank charter, the corporation is invested with all the rights and privileges usually exercised by banks. By the eighth section the City Bank shall have like privileges granted to it in making loans on mortgage, taking security, and enforcing payment thereof, as are now accorded by the law to the Consolidated Association of the Planters of Louisiana. By the eighteenth section, the directors of the City Bank shall be bound to loan at least three hundred thousand dollars, secured by mortgage on real property, on the terms and conditions contained in the charter of the Bank of Louisiana. By the thirty-second section of the charter of the Bank of Louisiana it is provided, that in all hypothecary contracts or obligations entered into by any individual with or in favor of the bank, &c., it shall be lawful for the wife of such individual to bind herself jointly and in solido with him. The charter of the Consolidated Association, section twenty-third, contains the same provisions verbatim.

My opinion is, that the disability of a married woman to bind herself jointly and severally with her husband in a mortgage or other obli-

gation, is to be considered as abrogated by the legislature in favor of the City Bank of New Orleans.

It is therefore considered, that plaintiffs have judgment against Thomas Banks and Charlotte Fogarty, his wife, in solido, for the amount claimed in the petition, with costs.

District court, clerk's office. A true copy. May 3rd, 1845.

[SEAL.] (Signed) P. LEBLANC, *Deputy clerk.*

$9 75.

*Reasons for judgment, filed 1st July,* 1845.

CITY BANK,
vs.
HOUSTON et als.

On the thirtieth July, eighteen hundred and forty-two, Thomas Banks, of the city of New Orleans, filed his petition in the United States district court of Louisiana, holding jurisdiction in bankruptcy, praying to be declared a bankrupt. After proof of the necessary publication, he was accordingly declared a bankrupt on the fifth September, eighteen hundred and forty-two; after the usual and necessary publication on the fifth day of December he obtained his discharge, no opposition having been made thereto.

It must further be stated, that the City Bank afterwards attacked the discharge of Thomas Banks in the State court, as having been fraudulently obtained. A decree was rendered annulling the discharge, from which an appeal to the supreme court was taken, and this appeal is now pending. Banks surrendered real estate of great value, a part of which consisted of a block of buildings called "Banks' arcade." On this property the Canal Bank was first mortgagee for the sum of about one hundred and forty thousand dollars, the Carrollton Bank was second mortgagee for the sum of about fifty thousand dollars, and the City Bank was third mortgagee for the sum of about fifty thousand dollars. F. B. Conrad was appointed assignee of Thomas Banks. On the tenth October, eighteen hundred and forty-two, the assignee filed a petition setting forth the propriety of advertising the sale of the property in the northern and eastern cities, of subdividing some of the large masses of property, of erecting partition walls, making plans, &c.; that the usual mode of renting property in New Orleans was from November to November; that the mortgagees would not consent to a postponement of the sale of the property, unless the rents of it were secured to them, and praying that notice of the objects of the petition should be given by publication. An order was made accordingly, and on twenty-fourth October, eighteen hundred and forty-two, after proof of publication of the substance of the petition and of the prayer thereof, and no opposition having been made, the assignee was authorized to act in the manner thought advisable by him.

On the fourteenth January, eighteen hundred and forty-three, the assignee filed a petition, praying that, for certain reasons therein set forth, he might be dispensed with advertising the sale of the property

in the northern and eastern cities; that at the instance of some of the mortgage creditors the sale might take place on the fifteenth February, according to the terms, &c., set forth in a schedule filed with the petition, and designated with the letter A. On the fifteenth day of January, eighteen hundred and forty-three, a sale was ordered according to the prayer of the petition, with advertisements. On the twenty-third of December, eighteen hundred and forty-two, the assignee filed a petition praying for an order of sale of the property mentioned in schedule of the bankrupt, among which was the Arcade, and that ten days notice of the application for such order be published in two newspapers. An order was made accordingly, and further directing that any opposition thereto should be heard on the sixth January, eighteen hundred and forty-three. With the petition for an order of sale of the bankrupt's property a schedule of the property was filed, setting forth the terms of sale, the manner in which Banks' arcade was to be divided, &c., as above stated. At the time that the order was made on the petition to give notice of the application of the assignee to sell the property, an entry was made on the minutes directing that the hearing should take place on the sixth January, eighteen hundred and forty-three; that a publication of the application should be made in the Picayune, Tropic, and Bulletin papers; and that personal notices should be given to certain creditors therein named, among whom is the City Bank. A copy of the notice is given, on which the marshal was to make his return of service. That notice requires the parties upon whom it is served to appear and shew cause why the assignee should not be authorized to erase and cancel all mortgages, judgments, and liens, recorded in favor of certain creditors of said estate, so that he may convey a clear and unincumbered title to any purchaser thereof, reserving to such creditors all their rights in law to the proceeds of the sale of the said property upon the final distribution thereof; and why the said property should not be sold in the manner and form, and upon the terms suggested by the assignee, as particularly set forth in the schedule annexed to his petition and filed in court.

The marshal returned a service of the copy of this notice on Palfrey, cashier of the City Bank, at the office of the bank, on the twenty-ninth December, eighteen hundred and forty-two. In the copy of the notice on which the return of service was endorsed, as it appears in the extract of the bankrupt proceedings filed by the defendants, the day for the appearing of the parties notified is left blank, as to the particular day of January on which the parties were to be heard in opposition; but in the extract of the same proceedings filed by the plaintiffs, the day of hearing was filled up by 5th January, 1843. It further appears that, by the rules of the bankrupt court, Thursday and Friday of each week were set apart for the hearing of bankrupt cases, motions, &c., and that Thursday and Friday were the 5th and 6th days of January, 1843.

It will be recollected that, by the order of the court, the hearing of this motion was for the sixth January, eighteen hundred and forty-three; from the minutes of the court it appears that, on the 6th January, 1843, some of the parties intended to be notified did appear and make oppo-

sition, and the terms of sale were altered to accord with the opposition; other parties appeared and acquiesced; but neither the Canal, Carrolton, nor City Bank, appeared in the matter. The sale of Banks' property took place on fifteenth February, eighteen hundred and forty-three; and besides the advertisements ordered, handbills were placarded and distributed. The Arcade was divided into several lots, of which defendants respectively became purchasers.

In the decree of sale made sixth January, eighteen hundred and forty-three, the assignee was authorized and directed to cancel all conventional and special mortgages which existed on the property of Banks, in order that a clear and unincumbered title might be given to the purchasers of the property. This order was predicated upon the notice to oppose previously given to the mortgagees, viz., in the present instance, to the Canal, Carrollton, and City Banks; this order the recorder declined to obey; application was made to one of the State courts for a mandamus on the recorder to compel his compliance, and the mandamus was granted accordingly. The recorder appealed from this decision, which was however confirmed by the supreme court of the State; and, upon making the decree of confirmation, the recorder, without waiting for any mandate, cancelled all the mortgages, and, among others, that of the City Bank. From the terms and conditions of the sale, to which great publicity was given, it is manifest the intention of the assignee [was] to sell the full ownership of the property free of all mortgages and incumbrances.

The proceeds of the bankrupt estate were afterwards distributed among the creditors, after the usual orders, reports, publications, confirmations, &c. The Arcade property brought only one hundred and twenty thousand dollars, being twenty thousand dollars less than the amount due to the Canal Bank, the first mortgagee. From the proceedings it appears that the Canal and Carrollton Banks acquiesced in the sale, but that neither of these Banks appeared to prove their debts, from an apprehension, founded on an opinion held by many leading members of the profession, that the appearance of a mortgage or privilege creditor to prove his debt was a waiver of his mortgage or privilege, and reduced him to the rank of an ordinary creditor.

It further appears in evidence, from the testimony of Saml. J. Peters, president of the City Bank, that the President and Directors of that bank had taken opinion of counsel to the effect that, by virtue of the section of the bankrupt law, a mortgage creditor was not bound to make himself party to the bankrupt proceedings; and that, by refraining from doing so, such creditor preserved his mortgage intact, and could enforce it in the State courts; and that the President and Directors of the City Bank had come to a determination to pursue this course wherever they held mortgages against the property of persons seeking to avail themselves of the bankrupt law. It is also proved that S. J. Peters had personal knowledge of the time and place of sale of Banks' property. It also appears that in the distribution of the bankrupt's property the City Bank received the proceeds of stock of that bank which had been mortgaged to the bank by the bankrupt.

By some extracts from proceedings in the bankrupt court it will appear that, after the trial of this cause commenced, application was made to the U. S. district court to annul the return of service of the notice to appear on sixth January, eighteen hundred and forty-three, and shew cause why mortgage, &c., should not be cancelled; and, also, that the clerk of that court should be permitted to fill the blank or amend the error of the day on which the parties were to appear, on the ground that such error was made only in copy on which the return of service was endorsed, and that in point of fact the notices served on the mortgagees respectively was filled up with the right day, viz., the sixth January, eighteen hundred and forty-three. The district court permitted the amendment by the marshal, but refused to permit the clerk to make the proposed amendment. The City Bank, having acted on the opinion and advice of counsel as above stated, abstained from taking any part in the bankrupt proceedings; and, acting on the same opinion and advice, have brought the present action to subject the property in the hands of the purchasers from the assignee to sale for the payment of their mortgages.

After setting forth the particulars of their debt and mortgage, the petition alleges that the mortgage has never been legally cancelled and erased. That the property is in the hands of purchasers from the assignee of Thomas Banks; that these purchasers were fully apprised of the existence of the mortgage of the City Bank; and the petition concludes by praying that the property, in the hands of the purchasers as third possessors, be declared subject to their mortgage, and sold for its satisfaction; although in point of fact the petition is to all practical intents and purposes a bill in equity to foreclose, the answers amount to a mere general denial; and under these pleadings all the evidence thought necessary by either party has been introduced. The petition gives color of title to the defendants as purchasers under the bankrupt proceedings, and so far recognises, ratifies, and affirms the title of the defendants.

The controversy between the parties turns on the following points:

1st. Whether the mortgage of the City Bank has been legally erased and cancelled in such a manner as to destroy her rights.

2nd. Whether under the section of the bankrupt law the City Bank had not the right to keep out of the bankrupt proceedings, to disregard all attempts to bring her in by services of citation, rules, orders, &c., and hold on to the integrity of her mortgage rights, to be at any time thereafter prosecuted in the State courts.

3rd. Whether at any time, in the course of the bankrupt proceedings, there was any service of any citation, rules, order, or notice of motion which would bind and conclude her rights by default in case she failed to appear and oppose.

4th. Whether there was any such notice to the Bank of the intention of the assignee to sell the property free of incumbrance, and knowledge of such intention on the part of the Bank, so as to create an equitable bar against her in case she stood by and permitted persons to pur-

chase the unincumbered title to the property without making known her intention to insist upon her mortgage rights. This point turns upon that class of cases under which owners and holders of claims, having knowledge of the sale of property, do not make known their claim, and are thus considered to have acted fraudulently towards the purchasers in such degree and manner as to bar their rights.

With regard to the first point it is to be observed that, in Louisiana, mortgages do not carry a legal title to the property to the mortgagee, but are in form, what they are in substance, a mere incumbrance, or right to be paid out of the sale of the property. In all our legal proceedings, therefore, whether the property be sold at the suit of creditors, or under an insolvency, or on the demise of mortgager, the full right, title, and ownership of the property is always sold, and the rights of the mortgagees are converted to a claim on the proceeds in the hands of the sheriff, syndic, administrator, &c. There is an exception to this rule, so far as that subsequent mortgagees may sell subject to prior mortgages, but the rule is universal that where a first mortgagee sells, he sells the entire ownership of the property; and the sheriff, or other officer, is expressly invested with power to erase and cancel all subsequent mortgages. C. P., art. 685 and 708.

These articles appear to invest the sheriff or other officer with absolute authority to cancel the mortgages; but a construction of law has prevailed, that the sheriff or other officer shall not erase or cancel without notice to the subsequent mortgagees to appear and oppose. These oppositions are always in writing. The City Bank opposes to this rule of law a section of its charter, acts of 1830, page sec. , by which their rights are protected and reserved, notwithstanding the insolvency, demise, &c., of the mortgager. It is doubtful, however, whether any such section of a State law can avail against a right to sell under the bankrupt law of the United States. But there is another, and to my mind, insuperable objection, viz., that where the City Bank is third mortgagee, she cannot avail of any such right against a first mortgagee, who sees fit to provoke or acquiesce in a sale by a syndic, assignee, &c. In such cases, if the debt of the first mortgagee be really due, and the property does not bring enough to pay it, the subsequent mortgages are de facto extinguished; and the rule to shew cause taken by the sheriff, syndic, assignee, &c., &c., would only admit of opposition, on the score of irregularity of proceedings, or that the debt of the first mortgagee was fictitious or had been paid. If, therefore, the Canal Bank had appeared and provoked a sale of the property, or even if she acquiesced in it, it was not in the power of the City Bank to have offered any successful opposition to the sale, nor would a court in La. relieve a party who had not been notified, without a sufficient showing of equity. It is admitted on all hands that the Canal Bank acquiesced in the sale, and her doing so was under any circumstances a sufficient authorization for the assignee to proceed and sell. In her petition the City Bank sets up no equitable grounds for relief from that sale.

On the second point. Whatever opinion may ultimately prevail, can-

not, as I think, affect the present case. The City Bank stood third mortgagee, and if the Canal Bank, or first mortgagee, chose to avail of the bankrupt proceedings, and acquiesce in them, the City Bank was obliged to follow her.

On the third point. I take it for granted that, by means of the various publications and advertisements, which appear to have been regularly made by Thomas Banks, first to have himself declared a bankrupt, and secondly to obtain his discharge, every creditor, so far as they could be made a party to the proceedings, was made a party thereto, and is bound thereby. The counsel of the City Bank has taken a distinction between the bank being made a party as regards her rights against Thomas Banks personally, and as regards her rights on the mortgage property; to effect which last he seems to think that special citations were necessary. This distinction appears to me too fine for practical purposes.

With regard to the proceedings actually served upon the City Bank, altho' the word cited is actually used in the order of the judge, I consider it used only in a loose and vulgar sense, and as being equivalent to notice. The citation in its technical sense means only the preparatory step in the cause, and citations in bankruptcy as well as admiralty are effectual by publications only. Our law of procedure in La. recognises that all and every step in a cause after the first may be taken by rules, and sometimes notified to the party. The rule of 23d December, 1842, required notice, not citation, in the technical meaning of the word; I am fully satisfied, from the evidence of the case, that the notice to the City Bank was for the 6th of January, on which day all the other parties notified appeared, and that the error consisted only in filling up the notice, on which the return was made, with the 5th January as the day of appearance, instead of the 6th. But even admitting that the notice was for an appearance on the 5th January, the bank was fully notified of the substance of what was intended to be done, viz., to cancel all the mortgages, and sell the property with a free and unincumbered title.

One of the counsel for plaintiff has heaped authority upon authority, both of the elementary writers and the decisions of our Supreme Court, to the effect that there could be no substitute of notice to avail in place of a citation. Admitting this doctrine to be true, it would apply only to the preliminary citation in the cause. In a very important suit involving a large amount of property, I had occasion to quote some English decisions in chancery, which held that notice of the pendency of a suit was equivalent to citation, and a decree would bind a party. Doubtless many other decisions to the same effect would be found.

2 Philmore, 224. It is decided that persons having an interest, who were not parties to the suit, are bound by the decree, if they were privy to the proceedings. The following is the language of the court: "The process of citing parties is a convenient one for all suitors, because when that is done you need not prove actual privity. The law presumes actual privity after the legal process; the lis pendens is sufficient notice that persons should appear and protect their own interest; but if

you can prove actual privity, the legal process in point of solid justice and sound reason is superfluous; through ex abundante cautela it may still be convenient to resort to it, and have it upon record in another place. Spectators to the whole, and privy to the whole, if they had been dissatisfied, they might have intervened at any moment of the proceedings. This right of intervention, coupled with privity to the proceedings, is decisive to shew that they can have sustained no prejudice by not having been before cited, and not having given a final appearance." This and other cases will be found in the condensed Eng. Ch. reports.

This doctrine and rule prevails with regard to many other important rights. Notice of a conveyance, or of a prior mortgage, are equivalent to registry. So if a party stands by and permits his property to be seized and sold as the property of the third person, such conduct is considered a fraud, and the conveyance will bind him. That the City Bank knew that it was the intention of the assignee to sell this property and give *and give* an unincumbered title thereto there can be no doubt, and such conduct extinguishes their rights as fully as in the cases above stated. Parker, curator of Harris, vs. Florance, La. R.

Another principle has been adverted to by one of the counsel for the defendants, which was made the basis of my decision in the case of Poultney vs. Barrett, and a very pointed case from Decisiones Rotœ Romanorum.

Paz Praxis, vol. 2d, p. 29. Decissio XII. No. 10 of this decision reads as follows: deputatio curatoris pro minore necessario non est.

In that case a minor had not been legally represented, but the right of the matter had been litigated to the fullest extent with his major coheir, and the decree was held to bind the minor. The Carrollton Bank had the same interest to litigate this matter which the City Bank had, and no color of defence can be suggested which could have prevented the sale, if the Canal Bank, the first mortgagee, acquiesced in a sale by the bankrupt court. On all these grounds, therefore, I am of opinion that the plaintiffs are bound by the sale. The counsel of the defendant filed what he called an amended petition, and which may be called in truth a replication, the object of which was to obtain the opinion of the court on what may be called the abstract question of law, viz., whether under the bankrupt act a mortgagee could be forced into the bankrupt court, if it was his wish and intention to keep out of it, and rely on the assertion of his rights in the State courts.

On this abstract question I do not find it necessary to decide, because, as before said, I consider that if the first mortgagee joined or acquiesced in the bankrupt proceedings, the subsequent mortgagees were bound to follow him there, under the modifications imposed by the laws of Louisiana on rights of mortgages.

It is also impossible for me to conceive how the plaintiffs, who recognise the defendants to be the owners of the property under the bankrupt proceedings, can ask to have the property sold again for their benefit, and yet not take any notice of the remaining balance due the Canal

Bank, of the entire debt due to the Carrollton Bank, and of the amount paid by the defendants towards the extinction of the debt due to the Canal Bank. The plaintiffs cannot expect to be paid while the Carrollton Bank remains unpaid; and however much they may have chosen in their bill to foreclose, to avoid referring to the true state of facts, these facts are before the court on the evidence, and even if the court felt itself bound to decree a sale, would not enter into the consideration of that decree.

Upon the whole matter, therefore, I am of opinion that there be judgment for defendants, and that plaintiffs pay the costs of suit.

*Judgment.*

CITY BANK OF N. O.
vs.
WILLIAM HOUSTON and al. } No. 6611.

For the reasons assigned and on file, it is considered that there be judgment for the defendants, and that plaintiffs pay the costs of suit.

Rendered 1st July, 1845.

Signed 7th July, 1845. C. WATTS, *Judge.*

*Petition of appeal, filed 1st November, 1845.*

To the honorable the commercial court of New Orleans.

The petition of the City Bank of New Orleans respectfully shews:

That petitioner is aggrieved by the judgment of this court, rendered in the suit of said Bank vs. William Houston and others.

Wherefore, petitioner here tenders a bond with security, and prays that an appeal be allowed to the Supreme Court, and that all and singular the parties cited in the cause as defendants, be cited to answer the said appeal.

(Signed,) LOCKETT & MICON,
Pr. WM. C. MICON, *Attorney.*

*Order for appeal.*

An appeal is allowed in this case according to law, returnable in the Supreme Court, on the third Monday of December next, on the appellants giving bond, with Samuel J. Peters as security, in the sum of five hundred dollars, conditioned as the law requires.

NEW ORLEANS, 1*st November*, 1845.

(Signed,) C. WATTS, *Judge.*

*Bond.*

Know all men by these presents, that we, the City Bank of New Orleans, and Samuel J. Peters as surety, are held and firmly bound unto Wm. Houston and others, the defendants in the suit below stated, their executors, administrators, and assigns, in the sum of five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the City of New Orleans, on the first day of November,

in the year of our Lord one thousand eight hundred and forty-five. Whereas the above bound City Bank has this day filed a petition of appeal from a final judgment rendered against it in the suit of said Bank vs. said Houston and others, in the commercial court of New Orleans, on the 1st day of July, 1845:

Now, the condition of the above obligation is such, that the above bound City Bank shall prosecute its appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall [be] satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said Samuel J. Peters, surety, shall be liable in its place; the names of defendants stated in the margin.

(Signed,) SAM. J. PETERS, *Prest.* [L. S.]
(Signed,) R. J. PALFREY, *Cash.* [L. S.]
(Signed,) SAM. J. PETERS. [L. S.]

Filed 1st Nov., 1845.
(Signed,) ED. GARDERE, *Clerk.*

STATE OF LOUISIANA,
*Commercial court of New Orleans.*

I hereby certify that the above and foregoing 315 pages do contain a transcript of all the proceedings, as well as of all the documents filed in, and all the testimony adduced on, the trial of the cause wherein the City Bank of New Orleans is plaintiff, and William Houston and others are defendants, instituted in this court, and now on the records thereof, under the No. 6611.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, on this 10th day of [SEAL.] December, in the year of our Lord one thousand eight hundred and forty-five, and in the 70th year of the independence of the United States.

(Signed,) ED. GARDERE, *Clerk.*

I certify that the foregoing transcript of the record of the case therein mentioned, contains all the evidence adduced by the parties on the trial of the cause in the first instance.

10*th day of December*, 1845.
(Signed,) C. WATTS, *Judge.*

SUPREME COURT OF THE STATE OF LOUISIANA.

WEDNESDAY, *December* 16*th*, 1846.

The court met. Present, their honors George Eustis, chief justice, P. A. Rost, George R. King, and Thomas Slidell, associate justices.

CITY BANK OF NEW ORLEANS, app't, vs. WM. HOUSTON et als., app'ees. } 5973.

This cause was this day argued by W. C. Micon and R. H. Wilde,

esq'rs, of counsel for app'ts; and Levi Pierce, C. M. Conrad, and C. Roselius, esq'rs, of counsel for app'ees.

MONDAY, *January* 11*th*, 1847.

The court met. Present, their honors George Eustis, chief justice, P. A. Rost, George R. King, and Thomas Slidell, associate justices.

CITY BANK OF NEW ORLEANS, app'ts,
vs.
WILLIAM HOUSTON et als., app'ees. } 5973

In this cause the majority of the court this day delivered their opinion in writing, in the words and figures following:

This is an hypothecary action, in which the creditor asks for a decree subjecting certain property in the possession of the defendants to the payment of his debt. The defendants plead in substance, that they purchased the property at a judicial sale, made of a bankrupt's estate, under a decree of the bankrupt court, with a clear certificate of the recorder of mortgages that the proceedings in bankruptcy were regular, and that by reason thereof, and the discharge of the bankrupt, and by the decrees of the bankrupt court, the mortgage was extinguished and lawfully cancelled, and the property released from any charge or incumbrance resulting therefrom; that they were bona fide purchasers, and paid the purchase money, and that the City Bank was cognizant of the sale and all the proceedings in bankruptcy, and is bound by notice and knowledge of the same. There was judgment for the defendants, and the plaintiff has appealed.

The transcript of the different proceedings, and the other documents, have been so methodically set forth in the printed statement furnished in the brief of the counsel for the plaintiff, that it would be useless to give any further analysis of them. We proceed to give our decision on the different questions of law which this interesting case presents.

1. We do not consider that there is any thing in the conduct of the officers of the bank, as it is before us in evidence, which would bind the bank by the sale of the mortgage property. They acted on their view of the law consistently throughout; misled no one, deceived no one. The different opinions among professional men in relation to the powers of the bankrupt court are matters of notoriety, and prevented any one from acting otherwise than with caution and deliberation in the purchase of mortgaged property at bankrupt sales. It is impossible for us to overlook a fact which thus excludes the plaintiff from the operation of the salutary and equitable rule invoked by the counsel for the defendants.

2. The late parish court for the parish and city of New Orleans, at the instance of the assignee of the bankrupt, rendered a judgment against the recorder of mortgages, by which the latter was ordered to cancel the mortgage which is the subject of the present suit, and grant a certificate of no mortgage. On an appeal this judgment was affirmed. The plaintiff was not a party to these proceedings, and is not bound by them;

and the mortgage in question, existing on the property at the time of the sale and afterwards, unless released by the decree of the bankrupt court, or by the sale itself, so far as the defendants are concerned, must be considered, for all the purposes of this inquiry, as subsisting.

3. The power and jurisdiction of the bankrupt court in this respect must be next considered. This is a case in which the bankrupt court, at the instance of the assignee, without the consent of the mortgagee creditor, ordered mortgaged property to be sold, and the mortgage to be cancelled in the manner authorized by our laws in a concurso, and considering the assignee as vested with the same authority as is exercised by syndics in the settlement and liquidation of insolvent estates under the cessio bonorum.

The argument presents two antagonist systems as the true theory of the bankrupt act of 1841, and we have to decide between them; one gives to the bankrupt court an unlimited and absolute control over all mortgages, liens, privileges, and incumbrances, on all the property surrendered by the bankrupt, the other confines its jurisdiction to the unincumbered assets belonging to the bankrupt, except in cases in which parties may voluntarily apply to the court for relief, or remedies may be sought to be enforced against them, which are authorized by special provisions of the bankrupt act.

The different opinions entertained by enlightened and learned men on this subject attest its difficulty, and we are relieved by their researches from the labor, and in some degree the responsibility, of determining the question as *res nova*, by having it in our power to adopt one of the conflicting theories, under the convictions which the full discussion of the whole subject has produced on our minds.

Without drawing into question the constitutional power of Congress, under the authority to establish an uniform system of bankruptcy throughout the United States, to vest the jurisdiction in the bankrupt court which is contended for by the counsel for the defendants, it is not a little singular, that for the absolute powers contained in such a jurisdiction over the property of third persons, the exercise of which depends upon the will of any one who chooses to apply for the benefit of the act, there is no express warrant in the act itself, nor are those powers necessary, to carry it into effect.

The object of the bankrupt law was to discharge debtors from their debts. An artificial state of things was supposed to require the great remedy of novæ tabulæ. This was the purpose of the act, and there was neither reason nor policy in touching any other rights of property than those which stood in the way of this object.

The proviso contained in the second section, if it mean any thing, must mean this. It says: "That nothing contained in this act shall be construed to destroy, annul, or impair any lawful rights of married women or minors, or any liens, mortgages, or other securities on property, real or personal, which may be valid by the laws of the States respectively, and which are not inconsistent with the provisions of the second and fifth sections of this act." So far from the act providing

for the protection of these rights under its operation, they are expressly excluded from its benefit. All who prove their debts under the act must share alike, with the exception of the United States, those subrogated to their rights, and certain operatives for their wages, not exceeding twenty-five dollars.

The proviso of the second section is scarcely more explicit and positive than that which exempts fiduciary debts from the operation of the bankruptcy. Mr. Justice McLean, in the case of Chapman vs. Forsyth, 2 Howard, 208, in speaking of that class of debts says: "But as the discharge operates only on debts, contracts, etc., which are provable under the act, it is said that consent cannot include fiduciary debts."

"Such debts, without the assent of the creditor, are clearly not within the act. But if his debt shall be found on the schedule, and he not only proves it, but receives his proportionate share of the dividend, he is estopped from saying that it was not within the law. He is a privileged creditor, and is not bound by the bankrupt law; but he may waive his privilege. As a creditor, he has a right to come into the bankrupt court and claim his dividend. He does not establish his claim as a fiduciary one, but as a debt 'provable within the statute.' And having done this, he can never controvert the discharge." Vide, also, Morse vs. City of Lowell, 7 Metcalf, 155.

If the mortgage creditor prove his debt under the act, he can only receive a dividend with the other creditors; this of itself excludes the conclusion that the mortgaged property must be sold in the bankrupt proceedings.

The section 11th is coincident with, and justifies this construction. It provides that the assignee shall have full authority under the court in bankruptcy to redeem and discharge any mortgage or other pledge, or deposit, or lien, upon any property, real or personal, whether payable in presenti or at a future day, and to tender a due performance of the conditions thereof. By this mean the incumbrances being removed, the property belongs to the creditors, and is to be divided ratably among them; but no power is given over the mortgage, pledge, or lien, except to satisfy it, and thereby release the property. This is all that can be done by the court in bankruptcy.

If this be not the true construction of the bankrupt act, it certainly recommends itself by its extreme simplicity, by its accordance with the general tenor of the act, and its evident purpose and intendment, and its conformity with every one of its provisions, and its opposition to none. It gives the debtor all the relief he is entitled to ask; it discharges him from his debts personally, but leaves the rights of his creditors on property affected by his debts unimpaired. It leaves the State tribunals in the full exercise of their jurisdiction, except so far as that jurisdiction is divested by the constitutional power of the bankrupt court, with full and complete authority to carry into effect an uniform system of bankruptcy; and prevents that accumulation of power in the

bankrupt court, which is to be exercised without appeal, and which we cannot believe the act confers.

Some weight is attempted to be given to the contrary construction of the act from the mode of proceeding under our system of insolvency, but it has no affinity with the bankrupt act. The system of bankruptcy must be uniform through the United States; the enquiry is as to the jurisdiction conferred by the act on the bankrupt court; the powers of assignees and of the bankrupt court must be determined by its provisions.

We find them adequate for their object, consistent, and carrying out well recognised and constitutional powers. If the assignee finds that the property of the debtor is incumbered, he is authorized to remove the incumbrance by satisfying the creditor; he can sell it cum onere, or he can leave the creditor to exercise his right against it at his option; but we find nothing which authorizes the bankrupt court under this act to annul any mortgage, lien, or security, reserved, as we consider, under the proviso of the second section of the act.

It is also worthy of remark, that it is surprising that in so elaborately prepared a statute as the bankrupt act, no single provision is made for the mode of exercise of this jurisdiction over pledges, liens, and mortgages, for which the necessity was evident. Nor can this omission be considered as an oversight, for the act bears in every part the proofs of great care and foresight. In the 11th section, the assignee is not even authorized to compound or compromise any debts or securities due or belonging to the bankrupt, except under the authorization of the court, after ten days public notice in a newspaper. The rules of court for proceedings in bankruptcy, prepared under the direction of the Supreme Court of the United States, contained no provision on this important subject.

Such being the view we have taken of the act itself, it now remains to examine the authorities cited. The principal cases on which the appellees have based their arguments in favor of the powers of the bankrupt court, under which the mortgages in this case were released, are those of ex parte Christy, 3d Howard's Reports, 293, and Norton's assignee vs. Boyd, id. Howard, 427.

Those cases were decided in 1845, and were preceded by two cases decided by the late supreme court of this State, Clarke vs. Rosanda, 5 Robinson R. 27, and Conrad, assignee, vs. Prieur, recorder of mortgages, id. 49, which it is material to notice. The cases decided in the Supreme Court of the United States were both from the Louisiana district, and it is apparent, from the argument of counsel and the opinion of the court, that the decisions of our own court were not without influence in leading the learned judges of the Supreme Court of the United States to the conclusions to which a majority of them arrived.

The Louisiana decisions maintained the extraordinary powers asserted by the bankrupt court to their full extent. But they were made by a bare majority of the court. Judge Martin took no part in the causes, and on both occasions Judge Bullard gave a formal and em-

phatic dissent to the opinions of the court, and supported his views by a thorough and elaborate examination of the subject, which we consider unanswerable, as a sound exposition of the legal intendment and construction of the bankrupt act.

We think these decisions are founded on two capital errors. One is, in taking it for granted that the bankrupt act is in its administration identical with our Louisiana insolvent system, and that all the powers given by our laws to our courts for the liquidation of insolvent estates are given by the bankrupt act to the bankrupt court, which is no less than assuming the very point in dispute. This assumption is founded on a supposed necessity which authorizes the recognition of implied powers. It is obvious that no such necessity exists, and a very slight examination of the subject will satisfy any one that the supposition is chimerical.

Another error consists in considering the mortgage under our laws as different from mortgages as they exist in other parts of the Union. But under the bankrupt act the proceedings in that court are according to the rules and principles of equity, and equity considers mortgages, as our laws consider them, simply as the security for a debt or obligation. 3rd Blackstone Com. 435. The distinction between the two is without a difference, so far as relates to the action of a court of equity upon them.

And in relation to the supposed necessity of releasing the mortgages in order to facilitate the liquidation of the bankrupt's estate, we have only to refer to the operation of the bankrupt act in States other than Louisiana, in which the absolute control of the bankrupt court over mortgages has never been asserted; nor is any such necessity supposed to exist under the English system of bankruptcy.

The opinion of the Supreme Court of the United States in Christy's case was delivered on an application for a prohibition to the district court of Louisiana, and it was held that the court had no authority to issue writs of prohibition, except in the cases provided for by the statute, that is, where the district courts were proceeding as courts of admiralty and maritime jurisdiction. The application being in a case in bankruptcy, was disallowed.

The doctrinal portion of this opinion supports the jurisdiction of the bankrupt court to the extent contended for by the counsel for the appellees, and it seems to be affirmed in the subsequent case of Norton's assignee vs. Boyd et al.

The opinions in these cases do not come before us in such a form as to commend an acquiescence, and to demand from us a sacrifice of conscience and of our sense of duty to authority.

Being entirely aloof from those feelings which controversy rarely fails to engender, even with those who are the most anxious to avoid its effects, we have not stated in detail the objections to which we think the opinion of that high tribunal is obnoxious. There is one, however, which it will not, we hope, be considered out of place if we submit.

The Supreme Court has never decided that the jurisdiction of the

bankrupt court was exclusive of the State courts. The point was reserved in Norton's case, and the general exercise of the jurisdiction of the State courts on liens and mortgages, we think, renders its lawfulness unquestionable.

In order to enable the bankrupt court to liquidate an estate according to the doctrine in Christy's case, to class and settle the rank of the privileges and mortgages, to ascertain and give their relative positions to the different liens existing under our laws, the jurisdiction must be exclusive, the power must be absolute. A conflicting authority is irreconcilable with a speedy settlement, and leads to litigation and delay, which it is admitted on all hands the bankrupt act repudiates throughout.

The only mode by which estates can be settled within a reasonable time under that act, is by leaving it to operate upon the unincumbered assets of the bankrupt, and enabling those who have rights of property to exercise them in the ordinary tribunals as their interest or inclination may prompt them. The necessity of making the jurisdiction exclusive in order to enable the system to work out its own ends, appears to us so obvious that we cannot consider that a matter of this importance would be omitted, or even left in doubt, by the distinguished authors of this remarkable law.

We cannot believe that it was left to be implied, and that such a delegation of power, exclusive and without appeal, over the property of citizens, should be assumed or vested otherwise than openly, expressly, and in a formal manner. So much has been before the public on this question, that any thing further on our part would be merely an exhibition of what has been previously said, and it only remains for us to state our thorough conviction of the correctness of the views taken of it in the cases cited by Judge Bullard in his dissenting opinions, and which we adopt as an expression of our own.

In withholding our assent to the opinion given in Christy's case, we are far from considering that we, in any one single point, derogate from the respect which we owe and feel for the memory of the illustrious judge who delivered it, or for that august tribunal from which it emanated. We are acting under the stern responsibility of duty, and under the consolation that if our views are sound they will be sustained, and if erroneous, they will be corrected by the superior wisdom of those who will be called upon to decide this case in the last resort.

There is a fastidious and irrational delicacy which shrinks from the examination of every thing which bears the semblance of authority; but following the example of that court itself, and the lights which it holds out to those who are in pursuit of truth, we have considered this important subject with great care and solicitude, and cannot refuse to the party litigant the benefit of our conscientious and deliberate convictions.

In the case of the Louisville Railroad Company vs. Letson, 2d Howard, 554, Mr. Justice Wayne, in delivering the opinion of the court, says: "We remark, too, that the cases of Strawbridge and Curtis

and the Bank and Deveaux have never been satisfactory to the bar, and that they were not, especially the last, entirely satisfactory to the court that made them. They have been followed always most reluctantly and with dissatisfaction. By no one was the correctness of them more questioned than by the late Chief Justice who gave them. It is within the knowledge of several of us, that he repeatedly expressed regret that those decisions had been made; adding, whenever the subject was mentioned, that if the point of jurisdiction was an original one, the conclusion would be different. We think we may safely assert, that a majority of the members of this court have at all times partaken of the same regret, and that whenever a case has occurred on the circuit, involving the application of the case of the Bank and Deveaux, it was yielded to because the decision had been made, and not because it was thought to be right."

We have already said that the case of the Bank of Vicksburg and Slocomb, 14 Peters, was most reluctantly given on mere authority. We are now called upon, upon the authority of those cases alone, to go further in the case than has yet been done. It has led to a review of the principles of all the cases. We cannot follow further, and upon our maturest deliberation we do not think that the cases relied upon for a doctrine contrary to that which this court will here announce are sustained by a sound and comprehensive course of professional reasoning. Fortunately a departure from them involves no change in a rule of property. Our conclusion, too, if it shall not have universal acquiescence, will be admitted by all to be coincident with the policy of the Constitution and the condition of our country.

The act under consideration had but a short existence, but the exigencies of the future may require similar remedies to meet them, and it is in a political point of view extremely important to ascertain the extent of power vested in a bankrupt court, by the terms and provisions of this act, which may serve as a guide to be followed, or an example to be avoided, in future legislation.

Under the conclusions to which we have arrived, it is unnecessary to examine the other objections taken up by the plaintiff to the force and effect of the bankrupt proceedings, being of opinion that so far as they affect the plaintiff's mortgage the court was without jurisdiction. The plaintiff is entitled to his judgment.

It is ordered, adjudged, and decreed, that the judgment of *of* the commercial court be annulled, avoided, and reversed; and proceeding to render such decree as in our opinion should be rendered, it is further ordered, adjudged, and decreed, that the real estate and premises described in the plaintiff's petition, and in the act of mortgage of Thomas Banks in favor of the City Bank, granted by act before H. B. Cenas, of date the thirtieth June, eighteen hundred and thirty-seven, be seized by the sheriff, and sold to satisfy the plaintiff's demand, to wit, the sum of forty-four thousand dollars, with interest thereon, from the 30th day of June, 1842, until paid, at the rate of eight per centum per annum; and that, as between the defendants and the several parties

called in warranty, the case be remanded to the fourth district court of New Orleans for further proceedings according to law, the appellees paying the costs.

*Dissenting opinion of his honor Thomas Slidell, judge.*

In dissenting from the opinion upon the question of jurisdiction adopted by all the other members of the court, it is due to candor, and to the respect which I entertain for their judgment, to say, that my dissent is not dictated so much by the weight of their argument, as by the force of authority, and a consideration of the evils that would arise from overthrowing the doctrine established by the Supreme Court of the United States, and twice recognised by the former supreme court of this State. Were this question res nova, or even were the bankrupt law unrepealed, the inclination of my mind would be to concur on the main question with the opinion just pronounced by the Chief Justice, though I might differ as to some of the minor questions incidentally discussed.

I do not wish to be understood as recognising unqualifiedly the rule of *stare decisis*. Indeed the rule itself is not inflexible nor absolute. Those who respect law as a science, would not hold themselves bound in all cases by decisions, whether pronounced by themselves or others, which mature reflection should demonstrate to be opposed to sound reason. To do so would be to prostrate the science itself, by excluding it from that career of progress and improvement which is open to every other, and forbidding it to accommodate itself to those changes of manners and institutions, some amalgamation with which is indispensable to its utility and even to its existence. To perpetuate error might in some cases be as unpardonable as to originate it; and hence the history of every jurisprudence exhibits decisions overthrown and rules limited or abandoned.

As was said by a learned author and very eminent judge: "The revision of a decision very often resolves itself into a mere question of expediency, depending upon the consideration of the importance of certainty in the rule and the extent of property to be affected by a change in it." Kent, vol. 1, p. 477.

The question of the jurisdiction of the district courts of the United States under the bankrupt law, over the rights of a mortgagee who has not voluntarily submitted himself to its authority, is the only question determined by the majority of the court, and therefore the only one upon which I shall remark.

Between the Supreme Courts of the United States and the highest State tribunals there has long been established a system of reciprocal deference; while the Supreme Court of the United States has always professed the highest respect for the decisions of the State courts upon local laws, on the other hand, it has been usual for the State tribunals to receive the construction given by the Supreme Court of the United States to the laws of the United States as their true construction. This rule, as may be gathered from a long series of decisions, and as is obvious to

every mind, is founded upon the principle that the judicial department of every government is the appropriate organ for construing the legislative acts of that government.

If exceptions to this rule be made by State tribunals, it seems to me they should be limited to extreme cases, where either the error was too manifest to admit of doubt, or where the recognition of a principle established by the federal tribunal would necessarily involve, in the conscientious opinion of the State tribunal, the prostration of some vital constitutional right or function of State power, or a manifest usurpation of power by the General Government.

It is admitted by the majority of the court that the doctrinal opinion of the Supreme Court of the United States, in ex parte Christy, 3 Howard, supports the jurisdiction of the United States district court to the extent contended for by the counsel for the appellees, and is affirmed by that court in Nugent's case (3d Howard). This admission is undeniably just. I have examined with great care the masterly brief presented in this cause by the counsel for the appellants. One of those learned counsel argued before the Supreme Court of the United States the cases of Christy and of Nugent. On the question of jurisdiction the identical points seem to me to have been raised, and the identical authorities cited in Christy's case, which are now submitted to us. Those points and authorities were elaborately examined and replied to, if not answered, by Judge Story; on every essential point the opinion was adverse.

It is urged, however, that the circumstances under which the opinion was pronounced were such as to withhold from it the force of authority. It is true that the case was one of an application for a prohibition; that the Supreme Court of the United States declared itself without jurisdiction to issue the writ, and that the decision of that point only was indispensable. Under ordinary circumstances, what was said by the court on the question of jurisdiction now presented to us might be regarded as obiter dictum. But we cannot close our eyes to the remarkable fact, that the discussion of the jurisdiction of the district court of the United States, of its organization and powers under the bankrupt law, and of the scope and meaning of that statute, occupies thirteen pages of the printed opinion; while the power of the Supreme Court to issue the writ of prohibition is disposed of in as many lines. For a course so novel in judicial exposition it would be disrespectful to that high tribunal to suppose they had no adequate reason. That reason must at once suggest itself to every mind. The true interpretation of the bankrupt law was a subject of great moment; great conflict of opinion had arisen in the courts of the States, and in the inferior courts of the United States. Under the judicial organization of the district court, under the statute of 1841, there was no appeal from that court to the Supreme Court, and yet, even the extra judicial opinion of the Supreme Court in this state of conflicting decisions, was eagerly desired by the bench and bar throughout the United States. Under such circumstances that opinion was elaborately given after solemn argument, and its expositions cannot be treated as obiter dicta.

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Subsequently, in Nugent's case the same learned counsel renewed the discussion. The Chief Justice, who then acted as the organ of the court, apparently ex diligentia, and to give additional force, if necessary, to the opinion in Christy's case, recites in full the opinion of the circuit judge. That opinion contains, among others, the views of the circuit judge upon a point of legislative expediency. "I agree fully in the opinion," said Judge McKinley, "that upon the ground of expediency the jurisdiction of the district court of the United States, over all the property of the bankrupt, mortgaged or otherwise, should be exclusive; but I do not understand the bankrupt law to render it so." But he also says, "I wish it however to be distinctly understood that I am fully of opinion that the district court of the United States is vested with jurisdiction over mortgaged property belonging to the bankrupt, and that, when a proper case is shewn, it has power to foreclose a mortgage, and to do all other acts necessary to bring about a final distribution and settlement of the bankrupt estate." After inserting this opinion at length, the Chief Justice then proceeds: "We have inserted the whole of this decree, because we think the court were not only right in dismissing the bill, but, with a single exception, we concur also in the principles and reasoning on which the learned Judge founded his decision; the exception to which we allude is that part of the decree in which he expresses his opinion, that upon the ground of expediency the jurisdiction of the district court of the United States over all the property of the bankrupt, mortgaged or otherwise, should be exclusive, so as to take away from the State courts any jurisdiction in such cases. Upon that subject [it] is not our province to decide, and we have no desire to express an opinion upon it. But in every other respect the decree conforms to the opinion delivered by this court at the present term upon the motion for a prohibition in the case ex parte the City Bank of New Orleans, in the matter of Wm. Christy, assignee of Daniel T. Walden, a bankrupt, vs. the City Bank of New Orleans. In that case the opinion of this court, in relation to the jurisdiction of the district court in the matters of bankruptcy, has been fully expressed, and need not be repeated here; and according to the principles therein stated the decree of the circuit court in this case must be affirmed."

The substance of these decisions I understand to be, that the district court of the United States has jurisdiction over mortgages, and when in its discretion that jurisdiction is exercised, may by summary proceedings bring the mortgagees before it, decree a sale, settle the rank of creditors, and distribute the proceeds; protecting, however, in such distribution, the rights of the mortgagees as they would be protected in the State courts, and distributing the residue among the ordinary creditors; that this jurisdiction is not exclusive, and if not exercised by the United States court, a mortgagee, who has not come into the bankrupt court, may proceed in the State court to the foreclosure of his mortgage and sale of the mortgaged property. It will be observed that this doctrine protects the two classes of titles—those acquired by sales under State process, and those made under decrees of the bankrupt court.

Now, when we recollect that the bankrupt law went into effect in February, 1842; that the rules of the district court of the United States upon the subject matter of mortgages were adopted in October, 1842; that in April, 1843, the circuit judge for Louisiana recognised their legality, and the jurisdiction of the district court over mortgaged property and mortgagees; that the Supreme Court of the United States, and the former supreme court of Louisiana, have each twice recognised the same doctrine; that property of great value has been sold, and under numerous decrees of the district court; that the bankrupt law has been repealed, and the great mass of bankrupt estates administered, it seems to me too late for a court in Louisiana to entertain the question of jurisdiction.

By reason of the repeal of the bankrupt law we are sitting here to adjudicate upon the past. Were that law unrepealed, and the opinion expressed by authority so high manifestly erroneous, it might be said that the importance of avoiding future error should outweigh the danger of unsettling established landmarks, and disturbing important rights, which parties, under the sanction of the highest judicial authority, supposed they had acquired. But such is not the case; the doors of the bankrupt court have long since been closed to new applicants, and the administration of great mass of estates under their charge has been consummated. The future is not before us. It is true that the decision now rendered, if affirmed, might, as suggested by the court, be a beacon to the future legislator; but it appears to me that the conflict of decisions which has already occurred would be an ample warning to that department of the Government, should they ever think proper again to exercise that branch of their constitutional power.

From having had considerable opportunity of observing the course of procedure in the district court of the United States for this State, it is to my personal knowledge, not only that mortgage property of great value was sold under its decrees, but that in very many cases mortgagees who were cited, unless they held an early rank, made no appearance and did no acts which could be construed into a personal ratification of the sales made, or even affect them with bad faith. The door which will be thrown open by this decision to vexatious litigation will be a very wide one. The bankrupt law itself is considered by many as having been pregnant with evil; and if it be at this late day declared, that the district court was without jurisdiction over mortgaged property and mortgagees, an additional and fruitful source of evil will be opened.

For the great reasons above stated, I feel bound, on this question of jurisdiction, to submit my own doubts to the force of authority, and stand upon what has been solemnly decided.

In these brief remarks I have confined myself solely to the question of jurisdiction, because that is the only question really involved in the opinion of the majority of the court. I have considered that it would be superfluous at present to say anything on the questions of citation

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Now, when we recollect that the bankrupt law went into effect in February, 1842; that the rules of the district court of the United States upon the subject matter of mortgages were adopted in October, 1842; that in April, 1843, the circuit judge for Louisiana recognised their legality, and the jurisdiction of the district court over mortgaged property and mortgagees; that the Supreme Court of the United States, and the former supreme court of Louisiana, have each twice recognised the same doctrine; that property of great value has been sold, and under numerous decrees of the district court; that the bankrupt law has been repealed, and the great mass of bankrupt estates administered, it seems to me too late for a court in Louisiana to entertain the question of jurisdiction.

By reason of the repeal of the bankrupt law we are sitting here to adjudicate upon the past. Were that law unrepealed, and the opinion expressed by authority so high manifestly erroneous, it might be said that the importance of avoiding future error should outweigh the danger of unsettling established landmarks, and disturbing important rights, which parties, under the sanction of the highest judicial authority, supposed they had acquired. But such is not the case; the doors of the bankrupt court have long since been closed to new applicants, and the administration of great mass of estates under their charge has been consummated. The future is not before us. It is true that the decision now rendered, if affirmed, might, as suggested by the court, be a beacon to the future legislator; but it appears to me that the conflict of decisions which has already occurred would be an ample warning to that department of the Government, should they ever think proper again to exercise that branch of their constitutional power.

From having had considerable opportunity of observing the course of procedure in the district court of the United States for this State, it is to my personal knowledge, not only that mortgage property of great value was sold under its decrees, but that in very many cases mortgagees who were cited, unless they held an early rank, made no appearance and did no acts which could be construed into a personal ratification of the sales made, or even affect them with bad faith. The door which will be thrown open by this decision to vexatious litigation will be a very wide one. The bankrupt law itself is considered by many as having been pregnant with evil; and if it be at this late day declared, that the district court was without jurisdiction over mortgaged property and mortgagees, an additional and fruitful source of evil will be opened.

For the great reasons above stated, I feel bound, on this question of jurisdiction, to submit my own doubts to the force of authority, and stand upon what has been solemnly decided.

In these brief remarks I have confined myself solely to the question of jurisdiction, because that is the only question really involved in the opinion of the majority of the court. I have considered that it would be superfluous at present to say anything on the questions of citation

and nullity, and the very important questions of subrogation and other *exuities* in favor of these purchasers, or other parties interested.

*Tuesday, February 23d*, 1847.

The court met: Present, their honors, George Eustis, chief justice, P. A. Rost, George R. King, and Thomas Slidell, associate justices.

CITY BANK OF NEW ORLEANS, appellant,
vs.
WILLIAM HOUSTON and als., appellees. } 5973.

It is ordered that the rehearing prayed for in this case be refused.

*Rules.*

20th. All pleas, whether dilatory or in bar, must be set forth in the answer; no amendment shall be permitted to be made in any petition or answer, unless the same shall be made previous to the time when the cause is called to be set for trial; and no amendment shall be made after the issue joined, tending wholly to alter the nature of the action or defence.

FIFTH DISTRICT COURT OF NEW ORLEANS.

I certify the foregoing to be a true copy from the 20th rule of the first [SEAL.] rules, adopted and in force in the late first judicial district court of the State of Louisiana.

CLERK'S OFFICE, *December 18th*, 1846.
(Signed,) P. Le BLANC, *Clerk.*

Adopted in commercial court.
(Signed,) L. PEIRCE.

City Bank vs. Houston; above admitted as part of the record.
(Signed,) W. C. MICON, *for Plff.*

*Endorsed.*

5973, supreme court, City Bank vs. Houston & als; supreme court, filed Dec'r 10th, 1846.
(Signed,) F. McCULLOCK, *Dy. Clerk.*

*Petition.*

CITY BANK OF NEW ORLEANS
vs.
MARK DAVIS, H. Lambert, J. A. Caillavet, William Houston, S. G. Blanchard, Thomas M. Doyle, J. G. Barnard, Francis H. Hatch, John Freeland. } In error.

To the honorable the chief justice of the supreme court of the State of Louisiana.

The petition of Mark Davis, H. Lambert, J. A. Callaivet, William Houston, S. G. Blanchard, Thomas M. Doyle, J. G. Barnard, Francis H. Hatch, and John Freeland, shows, that they complain of error and

assign error in a certain final judgment rendered against them by the honorable the supreme court of the State of Louisiana, for an amount exceeding three thousand dollars; that it should have been rendered in their favor; in which suit is drawn in question the construction of a statute of the United States, and the decision is against the title, right, privilege, and exception specially set up or claimed by defendant under such statute.

Wherefore they pray your honor to allow a writ of error to the Supreme Court of the United States according to law, to act as supersedeas. And they will ever pray, &c.

(Signed,) LEVI PEIRCE, *Atty.*

*Order.*

So be it, on these defendants giving their joint and several bond, in the sum of twenty-five thousand dollars, conditioned according to law.

(Signed,) GEO. EUSTIS, *C. J.*

25*th Feb'y*, 1847.

*Bond.*

SUPREME COURT OF THE UNITED STATES.

CITY BANK OF NEW ORLEANS,
vs.
MARK DAVIS, H. Lambert, J. A. Caillavet, William Houston, S. G. Blanchard, Thomas M. Doyle, J. G. Barnard, Francis H. Hatch, John Freeland. } In error.

Know all men by these presents, that we, Mark Davis, H. Lambert, J. A. Caillavet, William Houston, S. G. Blanchard, Thomas M. Doyle, J. G. Barnard, Francis H. Hatch, and John Freeland, are held and firmly bound, jointly and severally, to the above named City Bank of New Orleans, in the sum of twenty-five thousand dollars, to be paid to the said City Bank of New Orleans, or their assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty-fifth day of February, in the year of our Lord eighteen hundred and forty-seven.

Whereas the above named Davis, Lambert, Caillavet, Houston, Blanchard, Doyle, Barnard, Hatch, and Freeland, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Louisiana:

Now, therefore, the condition of this obligation is such, that if the above named Mark Davis, H. Lambert, J. A. Caillavet, Wm. Houston, S. G. Blanchard, Thomas M. Doyle, J. G. Barnard, Francis H. Hatch, and John Freeland, shall prosecute their said writ of error to effect, and

answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall remain and be in full force and virtue.

(Signed,) JOHN FREELAND,
Pr. pro WM. HOUSTON,
PETER MAXWELL,
S. G. BLANCHARD,
Pr. pro J. A. CAILLAVET,
J. U. LAVILLEBEUVE,
J. G. BARNARD,
F. LAMBERT,
ROBERT WALL,
*For the estate of M. Doyle.*
MARK DAVIS,
F. H. HATCH.

*Endorsed.*

No. 5973, City Bank of New Orleans, app't, vs. W. Houston et al., in error; bond, Supreme Court, E. D. Filed February 25th, 1847.
(Signed,) EUGENE LASÈRE, *Clerk.*

*Agreement.*

SUPREME COURT.

CITY BANK OF NEW ORLEANS
vs.
MARK DAVIS, H. Lambert, J. A. Caillavet, Wm. Houston, S. G. Blanchard, Thomas M. Doyle, J. G. Barnard, Francis H. Hatch, John Freeland.

It is agreed that the above defendants may give a joint and several bond, in the sum of twenty-five thousand dollars, without any other person being required as security thereon.

(Signed,) H. LOCKETT,
W. C. MICON,
*Attys. for City Bank.*

*Endorsed.*

5973, City Bank of New Orleans, app't, vs. Wm. Houston et al., app'ees, in error; Supreme Court, E. D. Filed February 25th, 1847.
(Signed.) EUGENE LASERE, *Clerk.*

To the honorable the supreme court of the State of Louisiana.

The petition of Francis M. Fisk and Daniel Weaver, residing in this city of New Orleans, respectfully shows, that they are informed and believe there is error, and assign error, in a certain final judgment rendered by this honorable court against them, on the 20th day of January, 1847, in the suit of the City Bank of New Orleans vs. Wm. Houston et als., for an amount exceeding the sum of three thousand dollars, in

which was drawn in question the construction of a statute of the United States; and said decisions of this honorable court, (being the highest court in which a decision in said suit could be had in the State of Louisiana,) is against the title, right, privilege, and exemption specially set up and claimed by your petitioners, as will appear of record in said suit.

Wherefore your petitioners pray that a writ of error, to act as a supersedeas, from the said judgment of this honorable court, be allowed and granted, returnable to the Supreme Court of the United States according to law, and for general relief; and, as in duty bound, will ever pray, &c.

(Signed,) CHAS. M. RANDALL,
*Attorney for petitioners.*

*Order.*

The writ of error is granted, to operate as a supersedeas, on the appellants giving bond in one-fifth of the amount of the judgment, with security, to be approved.

(Signed,) GEO. EUSTIS, *C. J.*

*4th March*, 1847.

*Bond.*

SUPREME COURT OF THE UNITED STATES.

CITY BANK OF NEW ORLEANS
vs.
WM. HOUSTON et al.

Know all men by these presents, that we, Francis M. Fisk and Daniel Weaver, as principals, and Harvey St. John, and Newland Holmes, and Whiting Valentine, and A. Rinne, as sureties, all of this city of New Orleans, are held and firmly bound, unto the above named City Bank of New Orleans, in the sum of thirteen thousand dollars, to be paid to the aforesaid City Bank of New Orleans, its executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this fifth day of March, one thousand eight hundred and forty-seven.

Whereas the above named Francis M. Fisk and Daniel Weaver have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, (in which the said Fisk and Weaver are defendants,) by the supreme court of the State of Louisiana:

Now, therefore, the condition of this obligation is such, that the above named Francis M. Fisk and Daniel Weaver shall prosecute their writ of error to effect, and answer all damages and costs, if they shall fail to

make good their plea, and this obligation shall be void; otherwise, the same shall remain in full force and virtue.

(Signed,) FRANCIS M. FISK, [L. S.]
DANIEL WEAVER, [L. S.]
HARVEY ST. JOHN, [L. S.]
WHITING VALENTINE, [L. S.]
N. HOLMES, [L. S.]
A. RINNE. [L. S.]

Signed, sealed, and delivered in presence of—witness the signature of Fisk, Weaver, St. John, Valentine, Holmes, and Rinne.

(Signed,) JOS. A. DAVIS.

Witness to all the signatures.

(Signed,) CHAS. M. RANDALL.

We approve of the above bond.

(Signed,) H. LOCKETT,
W. C. MICON,
*Attorneys for City Bank.*

*March 5th*, 1847.

This security is approved.

(Signed,) G. EUSTIS, *C. J.*

*5th March*, 1847.

*Endorsed.*

City Bank of New Orleans, app't, vs. S. Houston et al., No. 5973; supreme court, filed March 4th, 1847.

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA,
*Supreme court of the State of Louisiana, E. D.*

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana, for the eastern district, do hereby certify, that the foregoing two hundred and twenty-seven pages contain a true copy of the transcript of the proceedings had in the commercial court of New Orleans, in a certain suit wherein the City Bank of New Orleans was plaintiff, and Wm. Houston et al. were defendants; and also of the proceedings had in this supreme court on the appeal taken by said City Bank of New Orleans, which appeal is now on the files thereof under No. 5973.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, this seventeenth day of March, eighteen hundred and forty-seven, and in the seventy-first year of the independence of the United States of America.

[SEAL.]

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA,
*Supreme court of the State of Louisiana, E. D.*

I, George Eustis, chief justice of the supreme court of the State of Louisiana, do hereby certify, that Eugene Lasere is clerk of the supreme

court for the eastern district; that the signature of Eugene Lasere to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this seventeenth day of March, eighteen hundred and forty-seven, and in the seventy-first year of the independence of the United States of America.

GEORGE EUSTIS.

UNITED STATES OF AMERICA,
*Supreme court, State of Louisiana.*

To City Bank of New Orleans.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein the City Bank of New Orleans is plaintiff, and Mark Davis, H. Lambert, J. A. Caillavet, William Houston, J. G. Blanchard, Thomas M. Doyle, J. G. Bernard, Francis H. Hatch, John Freeland, are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable George Eustis, chief justice of the supreme court of the State of Louisiana.

GEORGE EUSTIS, *C. J.*

Received March 1, 1847, and served on the 2d of the same month copy of the above citation, together with copy of petition and order, on the City Bank of New Orleans, by handing the same to Saml. J. Peters *by* President, personally; and served on the same day copies of the same, personally, on F. M. Fisk and Daniel Weaver. Returned 4th March, 1847.

JNO. L. LEWIS, *Sheriff.*

Supreme Court, E. D., filed February 25th, 1847
EUGENE LASERE, *Clerk.*

*Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court *court* before you, between the City Bank of New Orleans, plaintiffs, and Mark Davis, H. Lambert, J. A. Callaret, William Houston, J. S. Blanchard, Thos. M. Doyle, J. G. Bernard, Francis H. Hatch, and John Freeland, defendants, a manifest error hath happened, to the great damage of the said Mark Davis, H. Lambert, G. A. Caillaret, William Houston, S.

G. Blanchard, Tho. M. Doyle, J. G. Bernard, Francis H. Hatch, and John Freeland, as by their *as by their* complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 25th of February, [L. S.] in the year of our Lord one thousand eight hundred and forty-seven.

ED. RANDOLPH, *Clerk*
*of the U. S. circuit court and eastern district of Louisiana.*

Supreme court of the State of Louisiana, filed 25th February, 1847.
EUGENE LASERE, *Clerk.*

*Supreme court of the State of Louisiana.*

UNITED STATES OF AMERICA,

To the City Bank of New Orleans.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein the City Bank of New Orleans is plaintiff, and Francis M. Fisk and Daniel Weaver are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable George Eustis, chief justice of the supreme court of the State of Louisiana.

GEORGE EUSTIS, *C. J.*

Supreme court, E. D., filed March 5th, 1847.
EUGENE LASERE, *Clerk.*

Received March 6, 1847, and served on the 8th of the same month copy of the above citation, together with copy of petition and order, on the City Bank of New Orleans, by personal delivery to R. J. Palfrey, esq., cashier, at the banking house, Camp street, near Canal street. Returned 8th March, 1847.

JNO. L. LEWIS, *Sheriff.*

*United States circuit court, No.* 5973.

CITY BANK OF NEW ORLEANS, App't,
vs.
WM. HOUSTON et al. } Writ of Error.

Copy of the writ of error lodged in the clerk's office of the supreme court of the State of Louisiana.

*Attorney of plaintiff in error.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between [the] City Bank of New Orleans, plaintiff, and Francis M. Fisk and Daniel Weaver, a manifest error hath happened, to the great damage of the said Francis M. Fisk and Daniel Weaver, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December, 1847, next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 5th of March, in [SEAL.] the year of our Lord one thousand eight hundred and forty-seven.

ED. RANDOLPH, *Clerk*
*of the United States circuit court*
*and eastern district of Louisiana.*

Supreme court of the State of Louisiana; filed March 4th, 1847.
EUGENE LASERE, *Clerk.*

CLERK'S OFFICE, *U. States district court,*
*district of Louisiana.*

"I, N. R. Jennings, clerk of the district court of the United States for the district of Louisiana, do certify, that I have examined the records in the bankruptcy of Thomas Banks on file and of record in this court, and I find that the word within as appears upon a transcript of the proceedings in said bankruptcy, as used in the entry of an order of court of date the 24th February, 1843, is a clerical mistake. The word as copied into the minutes is within; the original in the handwrit-

ing of F. B. Conrad, assignee, on file from whence the entry on the minutes was made uses the word *written*; hence the entry upon the minutes should have been written and not within, and the correction should accordingly be made.

In witness whereof I hereunto set my hand and affix the seal of the court, this third day of July, A. D. 1847.

N. R. JENNINGS, *Clerk.*

"One word interlined. N. R. J., *C.*"

UNITED STATES DISTRICT COURT.

"*Extract from Commissioner's report in the bankruptcy of Thomas Banks.*

"We next proceed to take an account of the debts and other claims proved by creditors under the bankruptcy. The board upon examination find the following claims duly proved by creditors, viz:

| | | |
|---|---|---|
| 1 | Carrollton Bank, (mortgage) with interest and costs as per proof claimed | $37,763 18 |
| 2 | Municipality No. 2, (taxes and paving) | 2,805 04 |
| 3 | Frazier and Adams, (mortgage,) with 10 p. c. interest from 13th May, 1840 | 94,253 05 |
| 4 | S. B. Davis, (mortgage,) with interest as per proof | 20,000 00 |
| 5 | C. M. Conrad, (mortgage,) with interest as per proof | 9,811 71 |
| 6 | 1st Municipality, (taxes,) | 280 00 |
| 7 | Gas Department, New Orleans Gas Light and Banking Co., with interest on several amounts as per proof claimed | 620 05 |
| 8 | James H. Dakin's services to estate | 1,044 00 |
| 9 | Lyall and Davidson, repairs to property | 32 43 |
| 10 | F. A. Sawyer, esq., for professional services | 1,000 00 |
| 11 | H. C. Chinn, (ordinary) | 110 00 |
| 12 | Do. do. | 245 62 |
| 13 | Atchafalaya Bank, (pledge on stock,) with the interest claimed on proof | 36,581 45 |
| 14 | New Orleans Gas Light and Banking Co., (ordinary,) with interest as claimed | 604 50 |
| 15 | Bank of Mobile, with interest as claimed | 6,250 00 |
| 16 | Adams and Fraizer, receivers, (mortgage,) with interest as claimed | 4,496 80 |
| 17 | Commercial Bank of New Orleans, (ordinary,) with interest as claimed | 15,002 00 |
| 18 | Hell and Relf, (ordinary) | 420 00 |
| 19 | M. M. Cohen, (privileged charges) | 30 00 |
| 20 | L. C. Duncan, (mortgage,) with 10 p. c. interest from 16th January, 1842 | 2,600 00 |
| 21 | Bank of Louisiana, with interest to 16th February, 1843 | 153,311 75 |
| 22 | Union Bank of Louisiana, with the interest upon the various amounts claimed in the schedule | 188,015 00 |
| 23 | F. B. Conrad as surety in the case of Lauve vs. Banks, privileged as judicial mortgage | 700 00 |
| 24 | Samuel J. Peters, (privileged,) with 10 p. c. interest from 24th March, 1838, and costs of protest $3 50 | 356 00 |
| 25 | State of Louisiana taxes for 1842, (ordinary) | 709 00 |
| 26 | Miss. and Marine Insurance, to balance due them with interest as per judgment, (ordinary) | 4,790 97 |
| 27 | Parish of Orleans taxes, years 1841, 1840, 1839, 1838, ordinary | 3,343 70 |
| 28 | Parish of Orleans taxes, 1842, ordinary | 707 00 |
| 29 | State of Louisiana, taxes 1841, ordinary | 855 50 |
| | Making in all, exclusive of interest, the sum of | $586,738 92 |

*Proved under the commission.*

| Creditors. | Residence. | Nature of debt. | Amount. |
|---|---|---|---|
| Commercial Bank - - | N. O. - | Loan on pledge of stock - | $37,200 00 |
| City Bank - - - | N. O. - | Loans on mortgage and pledge of stock, with interest - | 63,250 00 |
| Minor children - - | N. O. - | For the proceeds of this estate, all of which were used by him in his business, exact amount not known, supposed to be $15,000, with interest from 1828 - - - | 15,000 00 |
| City Bank - . - | N. O. - | His note favor of Robert O. Cammack - - - | 3,524 40 |
| He is also endorser on the paper of H. C. Cammack and Co., for his amount, which paper is said to be held by different institutions and individuals. | - | Second endorsement on note Thomas Burnett & Co. - | 972 00 |
| Samuel Nicholson - - | N. O. - | Endorsement on note H. R. and F. D. Newcomb - | 957 83 |
| Louisiana State Ins. Co. - | N. O. - | Endorsement on note drawn by Marie Louise Dubuy, and Eugene Villatte, two notes of $2,500 each, secured by mortgage on real estate - - - - - | 5,000 00 |
| Union Bank of La. - - | N. O. - | Endorsement on notes H. C. Cammack & Co., secured by mortgage on real estate - | 10,000 00 |
| He is also endorser on sundry promissory notes of which he has no record, most of which he supposes are good, and will be paid at maturity, amount of which he supposes to be from $50,000 to $75,000 - | | | 75,000 00 |
| He is further security on bond to the U. States for H. C. Cammack, as treasurer of the Branch Mint in this city, for the sum of $10,000 - | | | 10,000 00 |
| He is also security to the New Orleans Gas Light and Banking Co., on a bond for $10,000 of E. W. Wells, as security of the Gas Department of said Institution - - - - - - - | | | 10,000 00 |
| Making in all the sum of - - - - | | | $1,032,518 50 |

I, N. R. Jennings, clerk of the district court of the United States for the district of Louisiana, do certify, that the foregoing is a true and exact copy from a part of the commissioners' report in the bankruptcy of Thomas Banks, on file and of record in this court.

In witness whereof I hereunto set my hand, and affix the seal of the court, this 18th of April, 1846.

[SEAL.] N. R. JENNINGS, *Clerk.*

The within two papers, correcting clerical errors in the transcripts furnished by the clerk of the U. S. district court, and filed in this suit, are received by consent as part of the transcript for the Supreme Court of the U. S.

July 3, 1847.

WM. C. MICON and
R. H. WILDE, *for City Bank.*
LEVI PEIRCE,
*Atty. for appellant.*

Filed 11th August, 1847.